

### **Policy 2215 - Required Instruction (New)**

Senate Bill 636 added required courses to include instruction on the institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism. A new policy was created to include existing and the new requirements. The instruction shall provide students an understanding of American political philosophy and history, utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson. The instruction will offer an objective and critical analysis of ideologies throughout history including, but not limited to, capitalism, republicanism, democracy, socialism, communism, and fascism.

### **Policy 2625 - Civics Education Test (New)**

This is a new policy regarding the mandated Civics Education Exam that is required pursuant to West Virginia state law.

### **Policy 4116 - Determination of Employee or Independent Worker (New)**

These new policies are a result of passage of Senate Bill 272, effective June 9, 2021. The bill resolved uncertainty about the classification of workers as independent contractors or employees. Standards for determining who is an employee and who is an independent contractor for purposes of West Virginia's workers' compensation laws, unemployment compensation laws, Human Rights Act, and Wage Payment and Collection Act have been established. The Act supersedes, to the extent necessary, all laws in those areas that are contingent on the classification of a worker as an employee. West Virginia Code § 21-5I-2; West Virginia Code 21-5I-3.

This revised policy reflects the current West Virginia Code and should be adopted to have accurate policies.

### **Policy 4120.08 - Employment of Personnel for Extra-Curricular Activities (Revised)**

This revision is the result of passage of H.B. 3266 which requires upon the retirement of a Board of Education employee after July 1, 2021 that any extracurricular contract held by the employee shall terminate.

This revised policy reflects the current West Virginia code and should be adopted to have accurate policies.

### **Policy 8340 - Letters of Reference**

This policy has been modified to reflect a grammatical correction necessary.

### **Policy 4125 - Competency Testing for Service Personnel (Replacement)**

The replacement to this policy is due to the repeal and replacement to West Virginia Board of Education policy 5314 effective August 16, 2021.

This revised policy reflects the current West Virginia Board of Education policy and should be adopted to have accurate policies.

**Policy 3531 - Unauthorized Work Stoppage (Revised)**  
**Policy 4531 – Unauthorized Work Stoppage (Revised)**

As a result of the passage of Senate Bill 11, effective June 2, 2021, any work stoppage or strike by a Board employee is unlawful and deemed a serious disruption of children's state constitutional right to a thorough and efficient system of free schools.

This revised policy reflects the current West Virginia code and should be adopted to have accurate policies.

**Policy 1406 - Determination of Employee or Independent Worker (New)**

These new policies are a result of passage of Senate Bill 272, effective June 9, 2021. The bill resolved uncertainty about the classification of workers as independent contractors or employees. Standards for determining who is an employee and who is an independent contractor for purposes of West Virginia's workers' compensation laws, unemployment compensation laws, Human Rights Act, and Wage Payment and Collection Act have been established. The Act supersedes, to the extent necessary, all laws in those areas that are contingent on the classification of a worker as an employee. West Virginia Code § 21-5I-2; West Virginia Code 21-5I-3.

This revised policy reflects the current West Virginia Code and should be adopted to have accurate policies.

**Policy 0100 - Definitions**

This bylaw has been revised to provide for a comprehensive definition of the term social media.

**Policy 4122.01 - Drug-Free Workplace (Revised)**

This policy was revised due to the revision of WV policy 1461, Drug-Free Workplace, effective May 17, 2021.

This revised policy reflects the current WV Policy and should be adopted to have accurate policies.

**Policy 4120.04 - Employment of Substitutes (Revised)**

H.B. 3191 requires that when a retired employee becomes employed on a part-time, temporary basis by the Board, the Board must notify the employee if their employment will negatively impact their retired status or benefits. This bill is effective July 6, 2021.

This revised policy reflects the current West Virginia code and should be adopted to have accurate policies.

## **Policy 5722 - School-Sponsored Publications and Productions**

This policy has been revised to reflect the diverse types of student publications and productions currently available in the digital age. This replacement policy is proposed because of the wide variety of school-sponsored student media that are present in schools today and due to the many technological advances that have occurred.

The policy, as before, provides several options available to the Board regarding the type of forum that will be provided and what level of review and regulation will occur. The language in the policy has been modified to encompass the newer online electronic forms of school-sponsored student media. The policy provides four options to consider for the classification and regulation of such publications and production.

The recommendations made in this policy should be carefully considered when addressing the evolving student media environment and language should be adopted that best fits the district's needs.



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Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of New Policy - Vol. 14, No. 1 - February 2022 -  
REQUIRED INSTRUCTION

Code po2215

Status

**2215 - REQUIRED COURSES OF INSTRUCTION**

In all public, private, parochial, and denominational schools located within West Virginia, there shall be given prior to the completion of the eighth grade at least one (1) year of instruction in the history of the State of West Virginia.

The schools shall require regular courses of instruction by the completion of the 12th grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering, and perpetuating the ideals, principles, and spirit of political and economic democracy in America, and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The required courses shall include instruction on the institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism. The required courses shall include instruction that provides students an understanding of American political philosophy and history, utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson. The courses of instruction shall offer an objective and critical analysis of ideologies throughout history including, but not limited to, capitalism, republicanism, democracy, socialism, communism, and fascism.

The WV Board of Education shall cause to be taught in all public schools of WV the subject of health education, including instruction in any of the grades six through 12 as considered appropriate by the District, on:

- A. The prevention, transmission, and spread of acquired immune deficiency syndrome and other sexually transmitted diseases;

- B. substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general;
- C. the importance of healthy eating and physical activity in maintaining healthy weight; and
- D. education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose.

A full week of classes during the week selected by the Board shall be recognized as Celebrate Freedom Week. The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded. Celebrate Freedom Week shall include appropriate instruction in each social studies class which:

- A. Includes an in-depth study of the intent, meaning, and importance of the Declaration of Independence, the Emancipation Proclamation, and the Constitution of the United States with an emphasis on the amendments that are crucial to the survival of democracy and freedom, such as the Bill of Rights and the thirteenth, fourteenth, fifteenth, and nineteenth amendments;
- B. Uses the historical, political, and social environments surrounding each document at the time of its initial passage or ratification; and
- C. includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our constitutional republic.
- D. These requirements are applicable to all public, private, parochial, and denominational schools located within WV.

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WV Code 18-2-9

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Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of New Policy - Vol. 14, No. 1 - February 2022 - CIVICS EDUCATION TEST

Code po2625

Status

**2625 - CIVICS EDUCATION TEST**

Students shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and 12th-grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the Board for evaluation by the board’s curriculum director and reported to the Board members. This does not create a standard or requirement subject to state accountability measures.


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Legal WV Code 18-2-9

Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of New Policy - Vol. 14, No. 1 - February 2022 - DETERMINATION OF EMPLOYEE OR INDEPENDENT WORKER

Code po4116 

Status

**4116 - DETERMINATION OF EMPLOYEE OR INDEPENDENT WORKER**

It is in the best interests of this state, workers, and businesses for there to be certainty regarding the legal status of workers concerning workers' compensation as defined in WV Code, chapter 23, unemployment compensation in WV Code chapter 21A, Human Rights Act rights in WV Code 5-11-1 *et seq.*, and wage payment and collection in WV Code 21-5-1 *et seq.*, and their applicable rights and obligations. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits and obligations, and minimizes unnecessary mistakes, litigation, risk, and legal exposure laws concerning workers' compensation, unemployment compensation, Human Rights Act.

It is in the best interests of workers, business, and government to have clear, objective, and certain standards for determining who is an employee and who is an independent contractor concerning workers' compensation, unemployment compensation, Human Rights Act rights, and wage payment and collection.

The purpose of this policy is to bring certainty and consistency in the laws and clarity regarding the distinction between employees and independent contractors in laws concerning workers' compensation, unemployment compensation, Human Rights Act rights, and wage payment and collection. By doing so, the state will ensure that workers who are indeed "employees" are properly classified as such and will be afforded the legal protections and obligations that apply to such status, and that workers who desire to be, and meet the standards of being, independent contractors will be entitled to the freedoms that such a relationship provides, which will reduce unnecessary and costly litigation and confusion in the workforce marketplace and in the courts.

**Certain Laws May be Superseded**



All laws concerning WV Code, Chapter 23, Workers' Compensation; WV Code, Chapter 21A, Unemployment Compensation; WV Code, 5-11-1 *et seq.*, Human Rights Act; and WV Code 21-5-1 *et seq.*; Wage Payment and Collection, where the application thereof is contingent upon the classification of a worker as being an employee are superseded, to the extent necessary, by this policy.

### **Classification of Independent Contractors and Employees**

Subject only to the provisions of WV Code 21-5I-4(b), a person shall be classified as an independent contractor under WV laws as defined in workers' compensation in chapter 23, unemployment compensation in chapter 21A, Human Rights Act rights in 5-11-1 *et seq.*, and wage payment and collection as defined in 21-5-1 *et seq.* if:

- A. The person signs a written contract with the principal, in substantial compliance with the terms of this subsection, that states the principal's intent to engage the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:
1. Providing services for the principal as an independent contractor;
  2. Not going to be treated as an employee of the principal;
  3. Not going to be provided by the principal with either workers' compensation or unemployment compensation benefits;
  4. Obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship, and that the principal will not make any principal; and
  5. Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless: The expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies or expenses reimbursed are commonly reimbursed under industry practice; and;
- B. The person:
1. Has either filed, or is contractually required to file, in regard to the fees earned from the work, an income tax return with the appropriate federal, state, and local agencies for a business or for earnings from self-

employment; or

2. Provides his or her services through a business entity, including, but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship registered with a "doing business as" as required under state or local law; and;
- C. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental or regulator entity, or to protect persons or property, or to protect a franchise brand, the person actually and directly controls the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work: *Provided*, That the required deployment, implementation, or use of any safety improvement by an independent contractor as required by contract or otherwise shall not be considered when evaluating status as an employee or independent contractor under any state law. For purposes of this section, "safety improvement" shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with state, federal, or local safety laws or regulations or general safety concerns. This provision is satisfied even though the principal may provide orientation, information, guidance, or suggestions about the principal's products, business, services, customers and operating systems, and training otherwise required by law; and;
- D. The person satisfies three or more of the following criteria:
1. Except for an agreement with the principal relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services;
  2. Except for services that can only be performed at specific locations, the person has control over where the services are performed;
  3. The person is not required to work exclusively for one principal unless:
    - a. A law, regulation, or ordinance prohibits the person from providing services to more than one principal; or
    - b. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one

principal at a time or requires identification of the principal;

- c. The person is free to exercise independent initiative in soliciting others to purchase his or her services;
- d. The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;
- e. The person cannot be required to perform additional services without a new or modified contract;
- f. The person obtains a license or other permission from the principal to utilize any workspace of the principal in order to perform the work for which the person was engaged;
- g. The principal has been subject to an employment audit by the Internal Revenue Service (IRS) and the IRS has not reclassified the person to be an employee or has not reclassified the category of workers to be employees;

The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform the services; or

- E. The person satisfies the definition of a direct seller under Section 3508(b)(2) of the Internal Revenue Code of 1986.

The classification of all workers who do not satisfy the criteria set forth shall be determined by the test set forth in Internal Revenue Service Rev. Ruling 87-41, for purposes of classifying workers under the laws concerning workers' compensation, unemployment compensation, Human Rights Act, and wage payment and collection. In addition, nothing requires a principal to classify a worker who meets the criteria contained therein as an independent contractor, the principal always being free to hire the worker as an employee.

### **Limitations as to Scope**


The test for determining whether a person is an independent contractor or employee set forth in this policy applies only for purposes of workers' compensation, Human Rights Act, and wage payment and collection. This test has no application to other areas of law, such as whether a person is an independent contractor or an agent of principal for determining whether the law of principal and agent applies with respect to such questions as the issue of vicarious liability to a third party in tort. Further, this

policy does not apply with respect to organizations or persons subject to the provisions of WV Code 17-29-11.

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Legal                    WV Code, Chapter 23, Workers' Compensation  
                              WV Code, Chapter 21A, Unemployment Compensation  
                              WV Code 5-11-1, et seq, Human Rights Act  
                              WV Code 21-5-1 et seq., Wage Payment and Collection

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Book	Policy Manual
Section	Volume 14, No.1 - February 2022 Draft
Title	Copy of EMPLOYMENT OF PERSONNEL FOR EXTRA-CURRICULAR ACTIVITIES
Code	po4120.08
Status	
Adopted	August 1, 2007 
Last Revised	January 4, 2010

#### 4120.08 - EMPLOYMENT OF PERSONNEL FOR EXTRA-CURRICULAR ACTIVITIES

The Board of Education may find it necessary to employ personnel for extra-curricular assignments. Extra-curricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

The assignment of service personnel to extra-curricular assignments shall be made only by mutual agreement of the employee and the Superintendent, or designated representative, subject to Board approval.

The employee and the Superintendent, or a designated representative, subject to Board approval, shall mutually agree upon the maximum number of hours of extra-curricular assignment in each school year for each extra-curricular assignment.

The terms and conditions of the agreement between the employee and the Board shall be in writing and signed by both parties.

An employee's contract of employment shall be separate from the extra-curricular assignment agreement and shall not be conditioned upon the employee's acceptance or continuance of any extra-curricular assignment proposed by the Superintendent, a designated representative, or the Board.

The Board shall fill extra-curricular school service personnel assignments and vacancies in accordance with Board Policy 4120 and WV 18A-4-8b except that an alternative procedure for making extra-curricular school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved by both Board and an affirmative vote of two-thirds (2/3's) of the employees within that classification category of employment.

An employee who was employed in any service personnel extra-curricular assignment during the previous school year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. The Board may terminate any school service personnel extra-curricular assignment for lack of need pursuant to WV 18A-2-7. If an extra-curricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination.

If the employee declines the assignment, the extra-curricular assignments shall be posted and filled pursuant to Board Policy 4120 and WV 18A-4-8b.

Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or other extra-curricular activities coaches whose duties may include the supervision of students, subject to the following limitations:

- A. such person shall be employed under a contract with the County Board of Education which specifies the duties to be performed, which specifies a rate of pay equivalent to the rate of pay for professional educators in the county who accept similar duties as extra-curricular assignments and which provides for liability insurance associated with the activity

Such person shall not be considered employees of the Board for salary and benefit purposes other than as specified in the contract.

- ~~B. a currently employed certified professional educator has not applied for the position~~

- C. such person completes an orientation program designed and approved in accordance with State Board rules

This policy does not preclude the Board from entering into an extra-curricular coaching assignment agreement with an individual employed by another county's board of education provided both county boards of education agree to the proposed arrangement.

**Effective with the retirement of an employee on or after July 1, 2021, any extracurricular contract of the employee shall terminate when an employee retires. Nothing prohibits a retired employee from applying for and.**

**If they are the successful applicant, becoming employed in an extracurricular assignment or other position with the Board consistent with the rules for the employment of retirees established by the consolidated public retirement board.**

~~All coaching positions are to be posted as continuing positions.  
A head and/or assistant coach, new to Marion County Schools, shall be issued three (3) one-year sports-specific contracts followed by a fourth and final contract provided disciplinary action or termination due to unsatisfactory evaluations by the Board has not been necessary.  
Coaches may NOT be employed in more than one (1) coaching assignment during the same sport season as determined by the WVSSAG.  
Positions filled by applicants possessing WVSSAG authorizations will continue to be one (1) year only, as required by West Virginia Department of Education policy. Positions awarded to WVSSAG candidates will be reposted annually.~~

The Superintendent shall establish administrative guidelines to **implement this policy, ensure that each person employed as a coach or activity sponsor has the appropriate qualifications, has been properly interviewed, and signs an employment contract which includes the conditions of employment, compensation arrangements, and contract termination procedures.**

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Legal WV Code 18A-4-16, 18A-3-2a  
West Virginia Board of Education Policy 5202



Book Policy Manual  
 Section Volume 14, No.1 - February 2022 Draft  
 Title Copy of LETTERS OF REFERENCE  
 Code po8340  
 Status  
 Adopted August 1, 2007

5629

#### 8340 - LETTERS OF REFERENCE

The Board of Education recognizes that an employee or former employee's request to an administrator for a letter of reference is an opportunity to share information about the staff member's performance with a prospective employer or other interested party. A current or former employee shall have no expectation that a letter of reference will be written upon request. The decision to comply with such a request shall be solely at the discretion of the administrator.

If an administrator opts, however, to prepare a reference letter, the Board expects that administrator to provide specific and truthful comments concerning the employee or former employee's actual performance that can be substantiated by the administrator's personal knowledge and, in the case of negative comments, by documentation included in the individual's personnel file.

No letters of reference shall be provided on behalf of any employee or former employee unless there is a signed and dated authorization for the release of such information included in the pertinent personnel file.

An administrator who prepares a letter of reference or provides an employment reference pursuant to this policy, is prohibited from assisting a District employee, contractor or agent in obtaining a new job if s/he knows or has reasonable cause to believe that such District employee, contractor or agent engaged in sexual misconduct regarding a minor or student in violation of State or Federal law. Assisting does not include the routine transmission of administrative and personnel files. The only exceptions permitted are those authorized by the Every Student Succeeds Act and State law, such as where the matter has been investigated by law enforcement and the matter was officially closed due to lack of probable cause, where the individual was acquitted or otherwise exonerated of the alleged misconduct, or the case or investigation remains open and there have been no charges filed against, or indictment of, the employee, contractor or agent within four (4) years of the date of which the information was reported to a law enforcement agency.

In accordance with law, an administrator who, in the scope of his/her employment, provides a letter of reference may be entitled to a qualified privilege for statements included in that reference letter, provided such statements were made in good faith, without malice, and in accordance with this policy.

The Superintendent shall develop the administrative guidelines necessary to implement this policy.

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Legal Section 8546 of the Every Student Succeeds Act (ESSA), 20 U.S.C. 7926, WV Code 18A-4-22

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Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of COMPETENCY TESTING FOR SERVICE PERSONNEL

Code po4125

Status

Adopted August 1, 2007 

Last Revised September 8, 2020

4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL

The purpose of these tests ~~are to determine the qualifications of new applicants seeking initial employment in a classification as either a regular or substitute employee or an existing employee for employment in another classification. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment. The Board must use the State-approved competency test in its entirety with no additions to the test. The Board is not permitted to require additional testing for classifications or use District-developed tests. The Board may consider job-related factors in addition to the statutory qualification, if necessary, for the successful performance of the posted vacancy.~~ ~~shall be to provide the County Board of Education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment.~~

Competency tests align with the classification definition in WV Code 18A-4-8. Each classification title defined and listed in WV Code 18A-4-8a shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic shall be included in one (1) classification title and shall have the same competency test. For multi-classified positions, the applicant must be able to pass all relevant competency tests.

Competency tests are based on classifications and include a combination of written and performance tests. The written test provides the District with the applicant's knowledge of the classification's job duties and responsibilities. The performance test demonstrates the applicant's ability to perform tasks related to the classification.

A valid license/certificate from a reputable agency or institution is also acceptable for certain classifications as found in the WVDE's Service Personnel Manual located on the WVDE's website. Applicants holding a valid license/certification in certain classifications are not required to take a competency test.

~~The competency test shall consist of an objective written and/or performance test developed by the State Board of Education. Applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally.~~

~~The performance test for all classifications and categories other than bus operator shall be administered by an employee of the board of education or an employee of a multi-county vocational school that serves the county at a location designated by the Superintendent and approved by the Board.~~

~~A standard passing score shall be established by the State Department of Education for each test and shall be used by the District Board of Education. The subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in WV Code 18A-4-8. The subject matter of each competency test shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definition of the classification titles. Achieving a passing score shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in WV Code 18A-4-8b and shall not be required to take the competency test again.~~

~~An applicant who fails to achieve a passing score shall be given other opportunities to pass the competency test when making application for another vacancy within the classification category.~~



~~Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions. The District Board of Education is responsible for scheduling competency tests, notifying applicants of the date and time of the test. The Board shall not utilize a competency test other than the test developed by the West Virginia State Board of Education.~~

~~When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee shall be excused from work to take the competency test without loss of pay. Competency tests shall be utilized to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee. The Board reserves the right to determine minimum qualifications that exceed the definition of classification titles when the best interests of students compel the identification of additional qualifications.~~

~~Once an employee holds or has held a classification title in a category of employment, that employee shall be considered qualified for the classification title even though that employee no longer holds that classification.~~

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Legal

WV Policy 5314

Board of Education of the County of Randolph v. Scott, No. 31691

WV State Code 18A-4-8e

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Book Policy Manual  
 Section Volume 14, No.1 - February 2022 Draft  
 Title Copy of UNAUTHORIZED WORK STOPPAGE  
 Code po3531  
 Status  
 Adopted August 1, 2007

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3531 - UNAUTHORIZED WORK STOPPAGE

Board of Education employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by Section One, Article XII of the Constitution of West Virginia.

For the purposes of this policy, an employee of a board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the board of education:

- A. The employee does not report to work as required by his/her contract of employment;
- B. The employee is not on leave, as specifically permitted by any provision of WV Code or Board policy.  
An employee is not permitted to use personal leave in connection with a work stoppage or strike in violation of WV Code 18A-4-10; and
- C. The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the Superintendent.

The WV legislature did not intend with the enactment of WV Code 18-5-45 and 18A-4-10 to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees. The Board may not use accrued and equivalent instructional time and the delivery of instruction through alternative methods to cancel days lost due to concerted work stoppages and strikes.

If an employee remains employed by the Board, notwithstanding his/her participation in a concerted work stoppage or strike, which the legislature determines to be a ground for termination, the Board shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the Board.

~~The Board of Education is obligated and committed to provide certain basic services to students participating in Board programs. Therefore, if the schools are open and the students are in attendance, those basic services will be provided.~~

Recognizing the fact that the School System, for various reasons, could experience an unauthorized work stoppage, the Board remains committed to providing educational and related services to the schools and will fulfill its obligations to operate the schools when possible.

Professional staff members who fail to perform their normal duties when so required as part of a concerted, unauthorized work stoppage will be subject to disciplinary action, up to and including termination of employment.

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Legal WV Code 18-5-45a  
 West Virginia Supreme Court of Appeals held, in Jefferson County Bd. of Educ. v. 2 Jefferson County Educ. Ass'n, 183 W.Va. 15 (1990)  
 West Virginia Code 18A-2-8

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Book Policy Manual  
 Section Volume 14, No.1 - February 2022 Draft  
 Title Copy of UNAUTHORIZED WORK STOPPAGE  
 Code po4531  
 Status  
 Adopted August 1, 2007



## 4531 - UNAUTHORIZED WORK STOPPAGE

**Board of Education employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by Section One, Article XVII of the Constitution of West Virginia.**

**For the purposes of this policy, an employee of a board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the board of education:**

- A. **The employee does not report to work as required by his/her contract of employment;**
- B. **The employee is not on leave, as specifically permitted by any provision of WV Code or Board policy.**

**An employee is not permitted to use personal leave in connection with a work stoppage or strike in violation of WV Code 18A-4-10; and**

- C. **The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the Superintendent.**

**The WV Legislature did not intend with the enactment of WV Code 18-5-45 and 18A-4-10 to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees. The Board may not use accrued and equivalent instructional time and the delivery of instruction through alternative methods to cancel days lost due to concerted work stoppages and strikes.**

**The Board of Education is obligated and committed to provide certain basic services to students participating in Board programs. Therefore, if the schools are open and the students are in attendance, those basic services will be provided.**

**If an employee remains employed by the county board of education, notwithstanding his/her participation in a concerted work stoppage or strike, which the legislature determines to be a ground for termination, the Board shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the Board.**

**~~The Board of Education is obligated and committed to provide certain basic services to students participating in Board programs. Therefore, if the schools are open and the students are in attendance, those basic services will be provided.~~**

Recognizing the fact that the School System, for various reasons, could experience an unauthorized work stoppage, the Board remains committed to providing educational and related services to the schools and will fulfill its obligations to operate the schools when possible.

Service personnel staff members who fail to perform their normal duties when so required as part of a concerted, unauthorized work stoppage will be subject to disciplinary action, up to and including termination of employment.

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Legal

West Virginia Supreme Court of Appeals held, in Jefferson County Bd. of Educ. v. 2  
Jefferson County Educ. Ass'n, 183 W. Va. 15 (1990)

WV Code 18-5-45a

West Virginia Code 18A-2-8



Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of New Policy - Vol. 14, No. 1 - February 2022 -  
DETERMINATION OF EMPLOYEE OR INDEPENDENT WORKER

Code po1406 *Rr*

Status

**1406 - DETERMINATION OF EMPLOYEE OR INDEPENDENT WORKER**

It is in the best interests of this state, workers, and businesses for there to be certainty regarding the legal status of workers concerning workers' compensation as defined in WV Code, chapter 23, unemployment compensation in WV Code chapter 21A, Human Rights Act rights in WV Code 5-11-1 *et seq.*, and wage payment and collection in WV Code 21-5-1 *et seq.*, and their applicable rights and obligations. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits and obligations, and minimizes unnecessary mistakes, litigation, risk, and legal exposure laws concerning workers' compensation, unemployment compensation, Human Rights Act.

It is in the best interests of workers, business, and government to have clear, objective, and certain standards for determining who is an employee and who is an independent contractor concerning workers' compensation, unemployment compensation, Human Rights Act rights, and wage payment and collection.

The purpose of this policy is to bring certainty and consistency in the laws and clarity regarding the distinction between employees and independent contractors in laws concerning workers' compensation, unemployment compensation, Human Rights Act rights, and wage payment and collection. By doing so, the state will ensure that workers who are indeed "employees" are properly classified as such and will be afforded the legal protections and obligations that apply to such status, and that workers who desire to be, and meet the standards of being, independent contractors will be entitled to the freedoms that such a relationship provides, which will reduce unnecessary and costly litigation and confusion in the workforce marketplace and in the courts.

**Certain Laws May be Superseded**

All laws concerning WV Code, Chapter 23, Workers' Compensation; WV Code, Chapter 21A, Unemployment Compensation; WV Code, 5-11-1 *et seq.*, Human Rights Act; and WV Code 21-5-1 *et seq.*; Wage Payment and Collection, where the application thereof is contingent upon the classification of a worker as being an employee are superseded, to the extent necessary, by this policy.

### **Classification of Independent Contractors and Employees**

Subject only to the provisions of WV Code 21-5I-4(b), a person shall be classified as an independent contractor under WV laws as defined in workers' compensation in chapter 23, unemployment compensation in chapter 21A, Human Rights Act rights in 5-11-1 *et seq.*, and wage payment and collection as defined in 21-5-1 *et seq.* if:

A. The person signs a written contract with the principal, in substantial compliance with the terms of this subsection, that states the principal's intent to engage the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

1. Providing services for the principal as an independent contractor;
2. Not going to be treated as an employee of the principal;
3. Not going to be provided by the principal with either workers' compensation or unemployment compensation benefits;
4. Obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship, and that the principal will not make any principal; and
5. Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless: The expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies or expenses reimbursed are commonly reimbursed under industry practice; and;

B. The person:

1. Has either filed, or is contractually required to file, in regard to the fees earned from the work, an income tax return with the appropriate federal, state, and local agencies for a business or for earnings from self-

employment; or

2. Provides his or her services through a business entity, including, but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship registered with a "doing business as" as required under state or local law; and;

C. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental or regulator entity, or to protect persons or property, or to protect a franchise brand, the person actually and directly controls the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work: *Provided*, That the required deployment, implementation, or use of any safety improvement by an independent contractor as required by contract or otherwise shall not be considered when evaluating status as an employee or independent contractor under any state law. For purposes of this section, "safety improvement" shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with state, federal, or local safety laws or regulations or general safety concerns. This provision is satisfied even though the principal may provide orientation, information, guidance, or suggestions about the principal's products, business, services, customers and operating systems, and training otherwise required by law; and;

D. The person satisfies three or more of the following criteria:

1. Except for an agreement with the principal relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services;
2. Except for services that can only be performed at specific locations, the person has control over where the services are performed;
3. The person is not required to work exclusively for one principal unless:
  - a. A law, regulation, or ordinance prohibits the person from providing services to more than one principal; or
  - b. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one

principal at a time or requires identification of the principal;

- c. The person is free to exercise independent initiative in soliciting others to purchase his or her services;
- d. The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;
- e. The person cannot be required to perform additional services without a new or modified contract;
- f. The person obtains a license or other permission from the principal to utilize any workspace of the principal in order to perform the work for which the person was engaged;
- g. The principal has been subject to an employment audit by the Internal Revenue Service (IRS) and the IRS has not reclassified the person to be an employee or has not reclassified the category of workers to be employees;

The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform the services; or

- E. The person satisfies the definition of a direct seller under Section 3508(b)(2) of the Internal Revenue Code of 1986.

The classification of all workers who do not satisfy the criteria set forth shall be determined by the test set forth in Internal Revenue Service Rev. Ruling 87-41, for purposes of classifying workers under the laws concerning workers' compensation, unemployment compensation, Human Rights Act, and wage payment and collection. In addition, nothing requires a principal to classify a worker who meets the criteria contained therein as an independent contractor, the principal always being free to hire the worker as an employee.

### **Limitations as to Scope**

The test for determining whether a person is an independent contractor or employee set forth in this policy applies only for purposes of workers' compensation, Human Rights Act, and wage payment and collection. This test has no application to other areas of law, such as whether a person is an independent contractor or an agent of principal for determining whether the law of principal and agent applies with respect to such questions as the issue of vicarious liability to a third party in tort. Further, this



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policy does not apply with respect to organizations or persons subject to the provisions of WV Code 17-29-11.

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Legal                    WV Code, Chapter 23, Workers' Compensation  
                              WV Code, Chapter 21A, Unemployment Compensation  
                              WV Code 5-11-1, et seq, Human Rights Act  
                              WV Code 21-5-1 et seq., Wage Payment and Collection

Book	Policy Manual
Section	Volume 14, No.1 - February 2022 Draft
Title	Copy of DEFINITIONS
Code	po0100
Status	
Adopted	August 1, 2007
Last Revised	June 1, 2020

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## 0100 - DEFINITIONS

Whenever the following items are used in these bylaws, policies and administrative guidelines they shall have the meaning set forth below:

### **Administrative Guideline**

A statement, based on policy, usually written, which outlines and/or describes the means by which a policy should be implemented and which provides for the management cycle of planning, action, and assessment or evaluation.

### **Apps and Web Services**

Apps/web services are software (i.e., computer programs) that support the interaction of personal communication devices (as defined in Bylaw 0100, above) over a network, or client-server applications in which the user interface runs in a web browser. Apps/web services are used to communicate/transfer information/data that allow students to perform actions/tasks that assist them in attaining educational achievement goals/objectives, enable staff to monitor and assess their students' progress, and allow staff to perform other tasks related to their employment. Apps/web services also are used to facilitate communication to, from and among and between, staff, students, parents, Board members, and/or other stakeholders and members of the community.

### **Athletic Director**

A person employed by a County Board who is responsible for planning, management, operation and consult with principal on the ~~evaluation of the~~ athletic program for the school or schools to which he or she is assigned.

### **Board**

The Board of Education of the school system.

### **Bylaw**

Rule of the Board for its own governance.

### **Central Office Administrator**

A professional educator employee who implements or supervises one (1) or more aspects of the County's program and who meets the certification and/or licensing requirements of the State.

### **Classroom Teacher**

A professional educator has the direct instructional or counseling relationship with students and spending the majority of his/her time in this capacity. W.Va. 18A-1-1(b)(1)

### **Compulsory School Age**

Compulsory school attendance shall begin with the school year in which the 6<sup>th</sup> birthday is reached prior to the first day of July or upon enrolling in a publicly supported kindergarten program and continuing to the seventeenth birthday. There are certain statutory exemptions to compulsory attendance set out in § 18-8-1.

### **County**

A political subdivision of the State of West Virginia. The word "county" may be used in conjunction with the words "school system", "Board of Education" or "Superintendent" to specify the particular entity to which a reference is made.

**District**

A county school district.

**Due Process**

The safeguards to which a person is entitled in order to protect his/her rights.

**Ethics Commission (Commission)**

Means the West Virginia Ethics Commission.

**Full Board**

Authorized number of voting members entitled to govern the County.

**Information Resources**

The Board defines Information Resources to include any data/information in electronic, audio-visual or physical form, or any hardware or software that makes possible the storage and use of data/information. This definition includes but is not limited to electronic mail, voice mail, social media, text messages, databases, CD-ROMs/DVDs, web sites, motion picture film, recorded magnetic media, photographs, digitized information, or microfilm. This also includes any equipment, computer facilities, or online services used in accessing, storing, transmitting or retrieving electronic communications.

**Instructional Resources**

"Instructional Resources" include print materials, electronic resources, and/or combinations of such instructional resources which convey information to the student.

**Long-Term Substitute**

A long-term substitute means a substitute employee who fills a vacant position that the Superintendent expects to extend for at least thirty (30) consecutive days, and is either: (1) listed in the job posting as a long-term substitute position of over thirty (30) days; or (2) listed in a job posting as a regular, full-time position and (a) is not filled by a regular, full-time employee; and (b) is filled by a substitute employee.

For the purposes of WV Code 5-16-2 (eligibility for PEIA benefits), long-term substitute does not include a retired employee hired to fill the vacant position.

**May**

This word is used when an action by the Board or its designee is permitted but not required.

**Meeting**

Any gathering which is attended by at least a quorum and is open to all of the members of the Board, where deliberation toward a decision regarding the business of the Board is had or where such decision or action is made.

**Other Professional Employee**

A person from another profession who is properly licensed and is employed to serve the public schools and includes a registered nurse, licensed by the West Virginia Board of Examiners for registered professional nurses and employed by a county board of education.

**Parent**

The natural, adoptive, or surrogate parents or the party designated by the courts as the legal guardian or custodian of a student. Both parents will be considered to have equal rights unless a court of law decrees otherwise.

**Personal Communication Devices**

Personal communication devices ("PCDs") include computers, laptops, tablets, e-readers, cellular/mobile phones, smartphones, (x ) telephone paging devices (e.g., beepers or pagers), and/or other web-enabled devices of any type.

**Policy**

A general, written statement by the governing board which defines its expectations or position on a particular matter and authorizes appropriate action that must or may be taken to establish and/or maintain those expectations.

**President**

The president of the Board of Education.

**Principal**

The professional educator who as an agent of the Board has responsibility for the supervision, management, and control of a school or schools. The major responsibility shall be the general supervision of the school(s) and all school activities involving students, teachers and other school personnel. In policy, capitalization of Principal implies delegation of responsibilities to appropriate staff members.

**Professional Educator**

A teacher, supervisor, principal, Superintendent or public school librarian; registered professional nurse and employed by a county board, who has, at least, a baccalaureate degree from a nursing program; and includes technology integration specialists or any other person regularly employed for instructional purposes in a public school in this State.

**Professional Personnel**

Persons who meet the certification and/or licensing requirements of the state and includes the professional educator and other professional employees.

**Professional Instructional Personnel**

A professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which s/he is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.

**Professional Student Support Personnel**

Teachers who are assigned and serve on a regular full-time basis as a properly licensed counselor or school nurse with a bachelor's degree who is licensed by the West Virginia Board of Examiners for registered professional nurses.

Professional student support personnel shall also include professional personnel providing direct social and emotional support services to students, as well as professional personnel addressing chronic absenteeism. Professional student support personnel shall be considered as professional educators except in determining the allowance for professional educators.

**Public Employee**

Any full-time or part-time employee of any state, county, or municipal governmental body or any political subdivision thereof, including county school boards.

**Public Official**

Any person, including a public servant volunteer, who is elected to, appointed to, or given the authority to act in any state, county or municipal office or position, whether compensated or not, and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: 1) Contracting for, or procurement of goods or services; 2) administering or monitoring grants or subsidies; 3) planning or zoning; 4) inspecting, licensing, regulating or auditing any person; or 5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

**Public Servant Volunteer**

Any person performing services, without compensation, on behalf of a public official and who is granted or vested with powers, privileges or authorities reserved to public officials.

**Regular Full-Time Employee**

Any person employed by a county board who has a regular position or job throughout his/her employment term, without regard to hours or method of pay.

**Relative**

The mother, father, sister, brother, spouse, parent of spouse, child, grandparents, grandchild, or dependent in the immediate household.

**School Personnel**

All personnel employed by the Board. They shall be comprised of two (2) categories: professional personnel and service personnel.

**Secretary**

The Superintendent of the Board.

**Service Personnel**

An employee who serves the school or schools in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, food service and as aides.

**Social Media**

Social media includes online platforms where users engage one another and/or share information and ideas through text, video, or pictures. Social media consists of any form of online publication or presence that allows interactive communication, including, but not limited to, text messaging, instant messaging, websites, weblogs (blogs), wikis, online forms (e.g., chat rooms), virtual worlds, and social networks. Examples of social media include, but are not limited to, Facebook, Facebook Messenger, Google Hangouts, Twitter, LinkedIn, YouTube, Flickr, Instagram, Pinterest, Skype, and Facetime. Social media does not include sending or receiving e-mail through the use of District-issued e-mail accounts. Apps and services shall not be considered social media unless they are listed on the District's website as District-approved social media platforms/sites.

**Teacher**

A teacher, supervisor, principal, Superintendent, public school librarian; or any other person regularly employed for instructional purposes in a public school in this State.

**Technology Resources**

The Board defines Technology Resources to include computers, laptops, tablets, e-readers, cellular/mobile telephones, smartphones, web-enabled devices, video and/or audio recording equipment, projectors, software and operating systems that work on any device, copy machines, printers and scanners, information storage devices (including mobile/portable storage devices such as external hard drives, CDs/DVDs, USB thumb drives and memory chips), the computer network, Internet connection, and online educational services and apps.

**Treasurer**

The chief fiscal officer of the Board.

**Vice-President**

The Vice-President of the Board of Education.

**Voting**


A vote at a meeting of the Board. Board meetings may be held by telephone conference or other electronic means and members may vote by telephone conference, other electronic means or in person. 6-9A-2(4), Code of West Virginia

Citations to West Virginia statute are noted as WV Code or Code of West Virginia. Citations to Rules of the State Board of Education are noted as C.S.R. or (Code of State Regulations, or West Virginia State Board of Education policy. Citations to the Federal Register are noted as FR; to the Code of Federal Regulations as C.F.R., and to the United States Code as U.S.C. or U.S.C.A.

Revised 3/1/10  
 Revised 6/21/11  
 Revised 6/18/12  
 Revised 7/7/14  
 Revised 2/25/19  
 Revised 8/26/19

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Book Policy Manual  
 Section Volume 14, No.1 - February 2022 Draft  
 Title Copy of DRUG-FREE WORKPLACE  
 Code po4122.01  
 Status   
 Adopted August 1, 2007

4122.01 - DRUG-FREE WORKPLACE

The Board of Education believes that quality education is not possible in an environment affected by drugs. It will seek, therefore, to establish and maintain an educational setting which~~adopts this policy to establish and maintain a drug-free workplace as explained herein. The use, misuse and abuse of alcohol and drugs in the workplace present a clear danger to the health, welfare, and safety of the Board's students and employees. All employees shall be made aware of this policy and its requirements as explained herein.~~

Option 1 (needed only if Federal funds come directly from Washington)

-  meets the requirements in the Drug-Free Workplace Act.

In compliance with the Act, the Board prohibits the manufacture, possession, use, distribution, or dispensing of any controlled substance, including alcohol, by any member of the District's service personnel at any time while on District property or while involved in any school or Board-related activity or event. Any staff member who violates this policy shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program in accordance with Board of Education guidelines.

The Superintendent shall establish whatever programs and procedures are necessary to meet the Federal certification requirements.

[END OF OPTION #1]

Option 2 (applies to most schools)

-  is not tainted by the use or evidence of use of any controlled substance.

The Board shall not permit the manufacture, possession, use, distribution, or dispensing of any controlled substance, alcohol, or any drug paraphernalia as the term is defined by law, by any member of the District's service personnel at any time while on District property or while involved in any school or Board-related activity or event. Any staff member who violates this policy shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program in accordance with Board of Education guidelines.

The Board shall require every employee to sign a copy of a Drug-Free Workplace Verification Statement which states that the employee is aware of the policy and shall comply with the terms of the policy.

An employee shall notify their supervisor or department head of any criminal drug Statute conviction or alcohol violation occurring in the workplace or conviction outside of the workplace, no later than five (5) days after such violation or conviction occurs.

The Superintendent shall establish guidelines that ensure compliance with this policy and that each staff member is given a copy of the standards regarding unlawful possession, use, or distribution of illicit drugs and alcohol by staff and informed that compliance with this requirement is mandatory. Such guidelines shall provide for appropriate disciplinary actions.

[END OF OPTION #2]

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**DEFINITIONS:**



- "Alcohol"**—ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.
- "Contractor"**—any department, division, unit, or any person responsible for the performance or work under a contract with the Board.
- "Controlled Substance"**—any substance that is designated as a controlled substance under State or Federal laws.
- "Conviction"**—a finding of guilt (including a plea of nolo contendere) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- "Criminal Drug Statute"**—a criminal statute involving the manufacture, distribution, dispersion, use, or possession of any controlled substance.
- "Drug-Free Workplace"**—a work site where work is performed in connection with the employee's contract with the Board of Education. This workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the Board of Education as well as any other place at which the employee is being compensated by the Board to perform any work.
- "Drug"**—(1) articles/substances recognized as drugs for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals as recognized by the United States Pharmacopoeia Convention, and/or as noted by the American Society of Health-System Pharmacists Facts and Comparisons, the American Society of Health-System Pharmacists drug information database, the Physicians' Desk Reference, and/or any similar recognized authoritative text; (2) articles, other than food, intended to affect the structure or any function of the body of a human or animal; and (3) articles intended for use as a component of any articles specified in subsection (1) or (2) or this definition.
- "Employee"**—any person who works under any contract with the Board of Education for compensation of any kind.
- "Federal Agency"**—any agency as that term is defined in Section 552 (f) of Title IV, United States Code.
- "Grantee"**—any department, division, unit, or person responsible for the performance of work under the provisions of a Federal grant.
- "Illegal Drug"**—any drug which is not legally obtainable and/or is being used in a manner or for a purpose other than as prescribed.
- "Intoxicants"**—any intoxicating substance.
- "Legal Drug"**—nonprescription medication (medication that may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this State and Federal government) and prescription medication (medication, including any controlled substance under State or Federal law, that is required prior to being dispensed or delivered, to be labeled with any of the following statements: (1) "Caution: Federal law prohibits dispensing without prescription" or "Rx only"; (2) "Caution: Federal law restricts this drug to use by, or on the order of a licensed veterinarian"; as well as any drug which is required by any applicable Federal or State law or rule to be dispensed on prescription only or is restricted to use by practitioners only).
- "Look-Alike Drugs"**—tablets or capsules or other substances that are made to look like authentic drugs and are intended to imitate their effects.
- "Prohibited substance"**—means alcohol, intoxicants, look alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed or which have been lawfully prescribed but are being used in a manner that is not consistent with that prescription.
- "Work Day"**—the work day includes all times when an employee is engaged in any activity related to his/her employment with the Board and shall include but not be limited to all times from the moment the employee is required to report to work until the employee is permitted to end his/her work day. The work day includes but is not necessarily limited to any day on which the employee reports to work, all meal breaks or rest periods taken during any day on which the employee reports to work and any time the employee is being compensated by the Board of Education to perform any kind of work at any Board-sponsored/related events as well as all times the when the employee is on/in any Board-owned or leased properties, buildings, and/or vehicles.

#### **APPLICATION AND GOALS OF POLICY**

- A. It is the policy of the Board of Education to ensure that its workplaces are free of alcohol, intoxicants, look alike drugs, illegal drugs and legal drugs/controlled substances which have not been lawfully prescribed, and drug paraphernalia by prohibiting: a) the unlawful manufacture, distribution, possession and/or use of the same at its workplaces; b) employees being under the influence of the same during the work day and/or while on/in property, buildings, and/or vehicles owned or leased by the Board.
- B. This policy is applicable while employees are engaged in any work-related activity which includes performing any work during regularly scheduled working hours, meal breaks, rest periods, and/or other occasions having a clear connection with the Board of Education and its mission. In addition, this policy is applicable at any and all times when employees are on Board property, in attendance at any school or school-board activity/function. It is further applicable during the performance of any and all job-related activities, and/or while traveling in any vehicle owned, leased, or rented by the Board or Education.
- C. This policy's primary goal is to ensure that the Board's workplaces are safe, healthful, and secure for the Board's employees, students and visitors by keeping these workplaces free of alcohol, intoxicants, look alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed and drug paraphernalia as well as employees who are under the influence of the same.
- D. This policy applies to all Board of Education employees including transportation-related employees who are required to comply with United States Department of Transportation drug testing guidelines.

#### **PROHIBITED AND REQUIRED EMPLOYEE CONDUCT**

- A. No employee shall unlawfully manufacture, distribute, possess or use alcohol, intoxicants, look alike drugs, illegal drugs, and/or legal drugs/controlled substances which have not been lawfully prescribed



~~end/or are not being used as prescribed, and/or drug paraphernalia at any time or place subject to this policy.~~

- ~~B. No employee shall report to work for duty or remain on duty while under the influence of intoxicants, look-alike drugs, illegal drugs, legal drugs/controlled substances which have not been lawfully prescribed and/or legal drugs/controlled substances which have been lawfully prescribed but have been taken by the employee in amounts greater than directed by the prescription. This prohibition applies to any amount of said substances being in the employee's bodily systems.~~
- ~~C. No employee shall report to work or remain on duty while having a blood alcohol concentration of .04 or greater.~~
- ~~D. No employee shall consume or possess open containers of alcohol on Board of Education property, in a Board of Education vehicle or vehicles rented by the Board of Education.~~
- ~~E. No employee shall refuse to submit to a post-accident, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test, as applicable. Any such refusal shall be treated as a positive drug test and the employee will be subject to discipline including but not limited to suspension without pay and/or termination of their employment contract.~~
- ~~F. No employee shall report for duty or remain on duty when the employee uses any legal drug/controlled substance, except when its use is pursuant to the instructions of a physician who has advised the employee that the substance will not adversely affect the employee's ability to perform his/her duties.~~
- ~~G. Employees suspected of engaging in conduct prohibited by this policy shall be deemed unqualified to perform his/her assigned duties and shall be immediately removed from his/her assignment in order to protect the health, safety, and welfare of students and others in the workplace.~~
- ~~H. Employees who violate any portion of a drug testing facility's protocol for obtaining a sample from the employee, which protocol has been explained to the employee orally or otherwise, are subject to disciplinary action up to and including suspension without pay and/or termination of their employment contract.~~
- ~~I. No employee shall commit a Criminal Drug Statute offense in the workplace.~~
- ~~J. Every employee shall notify his/her immediate supervisor if he/she is convicted (including pleading no contest) of violating a criminal drug statute which violation occurred in the workplace, no later than five (5) calendar days after such conviction.~~

#### **CONSEQUENCES OF POLICY VIOLATION(S)**

~~Any employee who engages in conduct prohibited by this policy shall be subject to one (1) or more of following actions depending upon the circumstances of the violation:~~

- ~~A. Notification of law enforcement agency.~~
- ~~B. Notification of the West Virginia Department of Education.~~
- ~~C. Suspension with and/or without pay.~~
- ~~D. Termination of employment.~~
- ~~E. Under appropriate circumstances, as determined solely by the Superintendent, required enrollment in and successful completion of a substance abuse/counseling program at the employee's own expense as a condition of continued employment with the Board of Education.~~
- ~~F. Upon receiving notice of an employee's conviction of a criminal drug statute occurring in the workplace, the Board must take appropriate action within thirty (30) calendar days which may include: (1) taking appropriate personnel action against employee up to and including termination of his/her employment contract (consistent with requirements of the Rehabilitation Act of 1973 and the Americans with Disabilities Act), or (2) requiring the employee's satisfactory participation in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement or other appropriate agency. The Board shall apply all consequences fairly and consistently as required by law.~~
- ~~G. Upon receiving notice of an employee's conviction of a criminal drug statute occurring in the workplace, the Board shall notify the federal department of education or other federal grantor agency as required by the Drug-Free Workplace Act of 1988. (At the time this policy was drafted, the law requires that written notification be issued within ten (10) calendar days of learning of the employee's conviction.)~~

#### **RETURN TO DUTY AFTER A VIOLATION OF POLICY**

- ~~A. At the discretion of the Superintendent, those employees who have been suspended with or without pay for a violation of this policy may be required to do any or all of the following as a condition of the employee being permitted to return to duty:
 
  - ~~1. The employee must furnish a written verification of his/her successful completion of a substance abuse/counseling program; and/or~~
  - ~~2. The employee must furnish a physician's statement verifying that the employee is drug/alcohol free; and/or~~
  - ~~3. The employee must furnish proof of restoration and/or maintenance of any certification or license required for employee to legally perform his or her job duties for the Board of Education; and/or~~
  - ~~4. The employee must consent to and complete a pre-return-to-work urine or blood drug test that demonstrates that the employee is free from drugs and alcohol (other than prescription drugs which have been prescribed for the employee and are found in an amount consistent with the prescription);~~~~
- ~~B. Failure of any employee to meet any of the foregoing conditions as required by the Superintendent may and likely shall result in a denial of the employee's request to return to work as well as further disciplinary action up to and including termination of the employee's contract with the Board for failing to comply with this policy.~~



**MANDATORY REPORTING REQUIREMENT**

- A. Any employee who has a good faith belief that another employee has violated or is violating any portion of this policy other than being under the influence of a prohibited substance while at work shall contact his/her supervisor within twenty-four (24) hours and report all of the following:
1. the name of the suspected employee, and
  2. the reasons and circumstances that led the reporting employee to believe that suspected employee has violated and/or is violating this policy.
- B. Any employee who has a good faith belief that another employee in the workplace and/or at a school-related activity, as detailed elsewhere herein, is under the influence of a prohibited substance shall immediately contact his/her supervisor and report all of the following:
1. the name of the suspected employee, and
  2. the reasons and circumstances that led the reporting employee to believe that the suspected employee is under the influence of a prohibited substance.

**REASONABLE SUSPICION DOCUMENTATION & ALCOHOL AND DRUG TESTING**

A supervisor or administrator who receives a report of an employee being under the influence of a prohibited substance shall, if he/she has received the training required by this section, personally interact with and observe the suspected employee and document his/her observations of the employee. If the supervisor or administrator who received said report has not received the training required by this section, he/she shall immediately provide this report to an administrator who has received said training.

Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing to determine whether the employee has violated this policy by being under the influence of alcohol or other prohibited substance shall be deemed to exist when an employee manifests physical or behavioral symptoms or reactions commonly attributed to the use and/or misuse of alcohol or other prohibited substance as documented by an administrator who has received at least one (1) hour of training on recognizing and documenting such physical and/or behavioral symptoms and/or reactions and the requirements of this policy.

When the administrator determines that he/she has the necessary reasonable suspicion to require that the employee submit to alcohol and drug testing, he/she shall demand of the employee that the employee submit to drug/alcohol testing.

The administrator or his/her designee shall provide transportation for the employee and accompany him/her to a drug and alcohol testing facility that meets reasonable industry standards for conducting and verifying the results of alcohol and drug testing, and shall remain there with him/her until the initial test result is completed, except as otherwise provided herein.

If initial test results will not be available within sixty (60) minutes of providing a sample for testing, the employee shall be instructed not to report to work until 1) the results are provided to the administration, and 2) he/she is instructed to do so by the Superintendent or his/her designee.

**REFUSAL TO SUBMIT TO REASONABLE SUSPICION OR OTHER LAWFUL ALCOHOL AND DRUG TESTING**

Refusal of any employee to submit to the types of drug and alcohol tests used by the Board of Education and its selected testing facilities shall be deemed a positive drug test result and shall be sufficient grounds to terminate the employment of such employee.

A refusal to test includes any behavior which is intended to obstruct the proper administration of a drug/alcohol test. An employee's intentional and unreasonable delay in providing urine, breath, blood, or other specimen shall be considered a refusal to submit to testing and may result in the termination of the employee's contract with the Board of Education.

In the event that an employee cannot provide a sufficient urine specimen, the testing facility shall start a shy bladder log or similar procedure, and the Board of Education may avail itself of other drug testing protocols and/or have the employee examined by a physician immediately. If the examining physician cannot, to a reasonable degree of medical certainty, determine a legitimate medical explanation for the employee's inability to provide a specimen the same may be considered a refusal to test.

Except as otherwise provided herein, an employee shall NOT leave any alcohol and drug testing facility for any reason before the facility is able to obtain a sample from the employee, unless the employee is authorized to do so by the school administrator handling the matter or his/her designee.

If an employee violates any portion of a testing facility's protocol for obtaining a sample from the employee, which protocol has been explained to the employee orally or otherwise, the same shall constitute a refusal to submit to testing.

**CONDITIONS OF EMPLOYMENT**

As a condition of employment with the Board of Education, each employee shall (a) strictly abide by the terms of this policy; employee compliance is mandatory and cannot be waived or modified by any person; (b) notify his/her immediate supervisor if he/she is convicted (including pleading no contest) of violating a criminal drug statute which violation occurred in the workplace, no later than five (5) calendar days after such conviction; and (c) read and sign a statement evidencing that the employee is aware of this policy, has been given a copy of this policy, and agrees to abide by the terms of this policy.

**EDUCATION & AWARENESS**

It shall be the responsibility of the Board of Education to establish a drug-free awareness program for Board of Education employees to provide information on the following: (a) alcohol and drug abuse referral/treatment services available through PEIA; (b) the establishment and maintenance of a drug-free workplace as outlined in this policy; and (c) literature about the health risks and dangers of drug and alcohol abuse.


**ADMINISTRATIVE GUIDELINES**

The Board authorizes the Superintendent to establish written administrative guidelines to facilitate enforcement of and compliance with this policy.

Legal

41 U.S.C. 701, et seq., Drug-Free Workplace Act of 1988 20 U.S.C. 3224A



Book	Policy Manual
Section	Volume 14, No.1 - February 2022 Draft
Title	Copy of EMPLOYMENT OF SUBSTITUTES
Code	po4120.04
Status	
Adopted	August 1, 2007
Last Revised	May 20, 2017

#### 4120.04 - EMPLOYMENT OF SUBSTITUTES

The Board of Education shall employ and the Superintendent, subject to the approval of the Board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

- A. To fill the temporary absence of another service employee.
- B. To fill the position of a regular service employee who either requests a leave of absence from the Board in writing and is granted the leave in writing by the Board, or is on workers' compensation and absent.

If the leave of absence is to extend beyond thirty (30) working days, the Board shall post the position of the absent employee under the procedure set forth in WV Code 18A-4-8b. If a substitute service employee is employed to fill the position of the absent employee and is employed in the position for twenty (20) or more working days, the substitute service person acquires regular employee status with the exception of regular job bidding rights, does not accrue regular seniority, and is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the Board.

The regular or substitute employee who fills a vacancy that is related to a leave of absence or the absence of an employee on worker's compensation in any manner as provided in this policy, upon termination of the leave of absence of the employee, shall be returned to his/her original position or status.

No service person may be required to request or to take a leave of absence and no service person shall be deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence.

- C. To perform the service of a service employee who is authorized to be absent from duties without loss of pay.
- D. To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal for cause, or death of the regular service employee who had been assigned to fill the position.

Within twenty (20) working days from the commencement of the vacancy, the Board shall fill the vacancy under the procedures described in WV Code 18A-4-8b and 18A-2-5, and the person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to the position.

- E. To fill the vacancy created by a regular employee's suspension.

If the suspension is for more than thirty (30) working days, the Board shall post the position of the suspended employee under the provisions of WV Code 18A-4-8b. If a substitute service employee is employed to fill the suspended employee's position, the substitute employee shall acquire regular employee status with the exception of regular employee job-bidding rights, shall not accrue regular seniority, and shall be accorded all rights, privileges and benefits pertaining to the position until the termination by the Board becomes final or the suspended employee is returned to employment.

If the suspended employee is not returned to his/her job, the Board shall fill the vacancy under the procedures described in WV Code 18A-4-8b, and 18A-2-5.

- F. To temporarily fill a vacancy in a newly created position prior to employment of a service personnel on a regular basis under the procedure set forth in WV Code 18A-4-8b.

**G. ~~Other employment is never an acceptable reason for refusing to accept a job assignment.~~**

Service personnel substitutes shall be assigned in the following manner:

- A. A substitute with the greatest length of service time, that is, from the date s/he began his/her assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the

period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures described in WV Code 18A-4-8b.

- B. All service personnel substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments. Employees first placed on the substitute rotation list during a school year shall initially be placed at the bottom of the list. The substitute rotation list shall be re-ordered according to seniority each July 1st.
- C. If there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, they shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with a substitute service employee then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout the absence. For purposes of this policy, all regularly employed bus operators are considered to be employed within the same building or working station.■
- D. It is expected that substitute employees will be available and accept offered assignments. The unavailability of a substitute employee or the refusal of offered assignments at excessive levels has a detrimental effect upon the efficient operation of the school system. However, in recognition of the occurrence of a reasonable number of circumstances beyond the control of substitute employees, a determination has been made to permit a total of ten (10) instances of unavailability and/or refusal (regardless of reason) within a school year before adverse personnel action is recommended. Separate logs shall be maintained for substitute lists in each classification. Each log shall reflect the response to telephone contacts or attempted telephone contacts made to offer available substitute assignments. If there is no answer, the log shall note that the substitute employee was "not available." If an employee declines an assignment after being contacted the log shall note "decline." In the event a substitute employee is either "not available" or "declines" work on six (6) separate occasions the employee shall be provided with a warning letter indicating that four (4) additional instances of non-availability and/or refusal shall result in a recommendation that employment be terminated. After a warning letter has been issued and following four (4) additional instances of non-availability and/or refusal within a school year, the Superintendent shall recommend the termination of the employment of the substitute employee. A substitute employee who is terminated under the terms of this policy shall not be eligible for employment with Marion County Schools in any capacity for a period of three (3) years following the date of termination.

Persons whose names do not already appear on the substitute list for a service personnel category of employment may attain that status only by making application in response to a posted notice of vacancy for that substitute list. The posting process, and the selection of candidates from among the applicants, shall follow the procedures set forth in WV Code 18A-4-8b.

The salary of a substitute service employee shall be based upon his/her years of employment as defined in WV Code 18A-4-8 and as provided in the State minimum pay scale set forth in WV Code 18A-4-8a and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which s/he is employed.

Before any substitute service employee enters upon his/her duties, s/he shall execute with the County Board a written contract as provided in WV Code 18A-2-5.

To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by a random selection system established by the affected substitute employees and approved by the Board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.

Long-term substitute\*\* means a substitute employee who fills a vacant position that the Superintendent expects to extend for a least thirty (30) consecutive days, and is either:

- A. Listed in the job posting as a long-term substitute position of over thirty (30) days; or
- B. Listed in a job posting as a regular, full-time position and:
  1. is not filled by a regular, full-time employee, and
  2. is filled by a substitute employee.

For the purposes of eligibility for PEIA benefits, a long-term substitute does not include a retired employee hired to fill the vacant position. **Prior to any retiree becoming employed on a temporary full-time or temporary part-time basis by the District shall notify the Retirement Board and the retiree, in writing, if and when the retiree's potential temporary employment will negatively impact the retiree's retired status or benefits. Upon the retiree's acceptance of either temporary full-time or temporary part-time employment, the employer shall notify the Retirement Board, in writing, of the retiree's subsequent employment.**

Substitute service employees who have worked thirty (30) days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as are granted to regular service personnel in WV Code 18A-2-6, 18A-2-7, 18A-2-8 and 18A-2-8a. A substitute employee who has not worked a total of thirty (30) days may be dismissed at the sole discretion of the Superintendent, with or without cause. Any substitute employee dismissed by the Superintendent shall be notified of his/her dismissal in writing.

**Spouses of Board members may be employed by the Board, as substitute service employees, provided the Board member whose spouse is being considered for employment does not participate in any way in the discussion or**

~~vote on such employment, and does not subsequently discuss or vote upon discipline, salary level, or other matter directly affecting the employee.~~

The Board will not employ as a substitute service employee the spouse or unemancipated child or a dependent (IRS criteria) of the Superintendent or any Board member. Otherwise, the Board may employ a member's or the Superintendent's relatives, including his/her parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild. When any such relative of a Board member is employed as a substitute service employee, the related Board member shall not participate in any way in the discussion or vote on the employment, and the Board member shall leave the Board meeting during the discussion and vote. When any such relative of the Superintendent is employed as a substitute service employee, the Superintendent shall not participate in any way in the discussion on the employment. Thereafter, the Board member may not vote on a personnel matter involving his/her relative unless the matter affects the Board member's relative as a member of a profession or occupation, or as a member of a class of at least five (5) persons.

**[ ] No individual shall be eligible for a substitute service personnel assignment in which s/he would be responsible for supervising his/her spouse, or in which s/he would be supervised by his/her spouse.**

**[ ] No individual shall be eligible for a substitute service personnel assignment in which s/he would be responsible for supervising a member of his/her immediate family, or in which s/he would be supervised by a member of his/her spouse. A substitute service employee's immediate family members are his/her spouse, parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild.**

Any person who intentionally misstates facts material to his/her qualifications for employment as a substitute service employee or the determination of salary shall be subject to dismissal by the Board.

Applications for employment as a substitute service employee will not be accepted from any current Board member. If a Board member wishes to apply for a position, his/her resignation must be accepted by the Board prior to submitting an application and circumstances must be such as to avoid the Board member's apparent use of his/her authority or influence as a Board member to secure the employment position. Employment, as used herein, shall not include volunteer positions for which no compensation is paid.

A substitute service employee may file a grievance but is considered an employee only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule, or written agreement relating to such substitute.

Substitute service personnel shall be evaluated in accordance with State and local policies.

**\*All provisions set forth above come directly from Statute, WV Code 18A-4-15, and are mandated by Statute.**

**\*\* This definition comes directly from Statute, WV Code 18A-1-1,**

~~Substitutes shall have complied with any health examination required by law or policy.~~

Revised 4/21/09

Revised 3/1/10

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Legal WV Code 18A-4-15  
WV Code 6C-2-2(d)



*Doney Review 5037*

Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title REPLACEMENT - SCHOOL-SPONSORED PUBLICATIONS AND PRODUCTIONS

Code po5722

Status

Adopted August 1, 2007

**5722 - SCHOOL-SPONSORED STUDENT PUBLICATIONS AND PRODUCTIONS**

The Board of Education sponsors student publications and productions as means by which students learn, under adult direction/supervision, the rights and responsibilities inherent when engaging in the public expression of ideas and information in our democratic society.

For purposes of this policy, school-sponsored student media shall include both student publications and productions. School-sponsored student media does not include student expression related to classes that are not directly associated with student publications/productions. The term publication shall include distribution, transmission, and dissemination of a student publication, regardless of its medium. Student publications shall include any written materials, (including, but not limited to, banners, flyers, posters, pamphlets, notices, newspapers, playbills, yearbooks, literary journals, books, and t-shirts and other school-sponsored clothing) (✓), as well as material in electronic or online form including but not limited to Apps and Services (as defined in Bylaw 0100), web pages/sites, web logs (Blogs), video or audio clips, (✓) postings of Social Media (as defined in Bylaw 0100), and newsletters of announcements transmitted by e-mail, (✓) text, wireless broadcast, or other similar distribution/dissemination. [end of options] ( ) The Board expressly prohibits the use of Social Media related to student publications.

The term performance shall include presentation and broadcast of a student production. Student productions shall include vocal, musical, and/or theatrical performance, impromptu dramatic presentation, or any electronic media (including but not listed to radio and television programs, video blogs (vlogs), podcast, (✓) Social Media (as defined in Bylaw 0100) and other video or audio productions that are recorded for re-broadcast or broadcast in real time using any available broadcast technology). (✓) and other video or audio productions that are recorded for re-broadcast or broadcast in real time using any available broadcast technology). [end of option] ( ) The Board expressly prohibits the use of Social Media related to student productions.

[DRAFTING NOTE: The Board should select the following option only if it selected the first option under student publication or either or both of the first two options under student production.]  
(✓) Only District-approved social media (as defined in Bylaw 0100) may be used to host school-sponsored student media, in accordance with Policy 7544. School-sponsored student media also must comply with Policy 7540.02.

For purposes of this policy, school community is defined to include students, School District employees (i.e., administrators and professional and classified staff), parent/family members (✓) and other individuals who are (✓) invited by the Superintendent (✓) authorized or otherwise permitted by the Superintendent [end of option] to view a performance or receive directly from the District a publication (✓) and those who have been issued credentials to access the District's secure portal. [end of option]

The following speech is unprotected and prohibited in all school-sponsored student publications and productions: speech that is defamatory, libelous, obscene or harmful to minors as that term is defined in the Children's Internet Protection Action (CIPA); speech that is reasonably likely to cause substantial disruption of or material interference with school activities or the educational process; speech that infringes upon the privacy or rights of others; speech that violates copyright law; speech that promotes activities, products or services that are unlawful (illegal) as to minors as defined by State or Federal law; and speech that otherwise violates school policy and/or State or Federal law. The Board authorizes the administration to engage in prior review and restraint of school-sponsored publications and productions to prevent the publication or performance of unprotected speech.

Student expression relates to classrooms or educational settings not otherwise directly associated with school-sponsored student publications/productions are nonpublic forums. As nonpublic forums; the content of such student expression can be regulated for legitimate pedagogical school-related reasons. School officials shall routinely and systematically review and, if necessary, restrict the content of these student expressions prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker.

[DRAFTING NOTE: With respect to student expression related to classrooms or educational settings not otherwise directly associated with school-sponsored student publications/productions, select Option 1, Option 2, Option 3,



Option 4, or Option 5.][ ] Option #1

[ ] Nonpublic forum student expression may be published/performed outside the school community (i.e., to the general public). ( ) See Board Policy 9160 – Public Attendance at School Events.

[END OF OPTION #1]

[ ] Option #2

[ ] While nonpublic forum student expression generally may be published/performed outside the school community (i.e., to the general public), the following nonpublic forum student expression may be published/performed only to members of the school community: \_\_\_\_\_ [Identify] ( ). See Board Policy 9160 – Public Attendance at School Events.

[END OF OPTION #2]

 Option #3

While ordinarily nonpublic forum student expression may be published/performed only to members of the school community, the Superintendent may authorize specific nonpublic forum student expression to be published/performed outside the school community (i.e., to the general public). A teacher, student, or group of students who wish to have nonpublic forum student expression published/performed outside the school community must submit to the Superintendent a request for prior written approval for such publication/performance. ( ) See Board Policy 9160 – Public Attendance at School Events.

[END OF OPTION #3]

[ ] Option #4

[DRAFTING NOTE: The Board should select either Option 2 or Option 3 if it has authorized the limited use of District-approved Social Media to publish/perform nonpublic forum student expression.]

[ ] While ordinarily nonpublic forum student expression may be published/performed only to members of the school community, the following nonpublic forum student expression may be published/performed outside the school community (i.e., to the general public): \_\_\_\_\_ [Identify] ( ) See Board Policy 9160 – Public Attendance at School Events.

[END OF OPTION #4]

 Option #5

[DRAFTING NOTE: The Board should select this option if it has prohibited the use of District-approved Social Media to publish/perform nonpublic forum student media, with the exception of nonpublic forum student media that is disseminated through District-approved Social Media that employs a secure portal that restricts access to members of the school community through the use of a User ID and Password (or other form of biometric authentication security).]

[ ] Nonpublic forum student expression may be published/performed only to members of the school community. ( ) See Board Policy 9160 – Public Attendance at School Events.

[END OF OPTION#5]

[DRAFTING NOTE: PLEASE CHOOSE ONE (1) OF THE FOLLOWING FOUR (4) OPTIONS (A-D). The order in which the below four (4) options are listed is not meant to convey a preference or recommendation. Boards should select the option that best reflects their current practice or a new practice they wish to follow. As they consider the following options, the Board and administrators are encouraged to consult the accompanying Toolkit for a discussion of the different types of forums - e.g., nonpublic forum and limited public forum.]

[ ] Option A [Select if the Board intends to designate all school-sponsored student media to be limited-purpose public forums (i.e., not subject to prior review/restraint) and generally allows them to be published/performed outside the school community. This is the most permissive of the options.]

[ ] The Board designates all school-sponsored student media as limited-purpose public forums where students can address matters of concern and/or interest to their readers/viewers. All school-sponsored student media may be published/performed outside the school community. The student journalists, content-creators and/or performers involved in these publications/ productions have the right to determine the content of the student media.

[ ] The content may address general matters of public concern and is open to the public at large for comment at the discretion of the student journalists/content-creators/performers. School officials will not review or restrict the content of school-sponsored student media prior to publication/performance, except with respect to unprotected speech. ( ) Each medium should provide a full opportunity for students to inquire, question, and



exchange ideas. ( ) Content should reflect all areas of student interest and may include topics about which there may be dissent and/or controversy. [end of options]

All school-sponsored student media shall contain a notice to the reader/viewer that the material, while school-sponsored, is student directed and not subject to prior review. Given all student publications and/or productions have been designated as limited-purpose public forums, the school assumes no liability for their content. With editorial control comes responsibility. Student journalists, content-creators, and performers are expected to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards.

[END OF OPTION A]

[ ] Option B [Select if the Board intends to identify specific school-sponsored student publications/productions to be limited-purpose public forums (i.e., not subject to prior review/restraint), which may be published/performed outside the school community. School-sponsored student publications/productions not listed are considered nonpublic forums and will be subject to routine and systematic prior review and restraint. This is the second most permissive option, only permits prior review/restraint of nonpublic forums, and generally allows limited-purpose public forums to be generally published/performed outside the school community.]

The Board designated the following official, school-sponsored student media to be limited-purpose public forums:

[List all publications so designated:]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As limited-purpose public forums the student journalists, content-creators, or performers associated with the above-listed publications and/or productions may address matters of concern and/or interest to their readers/viewers. The student journalists, content-creators, and/or performers involved in the above-listed publications/productions have the right to determine the content of this student media.

[ ] The content may address general matters of public concern and is open to the public at large for comment at the discretion of the student journalists/content-creators/performers.

School officials will not routinely and systematically restrict content of the publications and/or productions listed above prior to their publication/performance, except with respect to unprotected speech. ( ) Each medium should provide a full opportunity for students to inquire, question, and exchange ideas. ( ) Content should reflect all areas of student interest and may include topics about which there may be dissent and/or controversy. [end of options]

The above-listed publications and/or productions shall contain a notice to the reader/viewer that the material, while school-sponsored, is student-directed and not subject to prior review. Given the listed student publications and/or productions have been designated as limited-purpose public forums, the school assumes no liability for their content, and with editorial control comes responsibility. Student journalists, content-creators and performers are expected to establish and enforce standards for their publications/productions that are consistent with professional journalism/ artistic/theatrical/broadcast standards.

All other school-sponsored student media including classroom and/or other curricular, co-curricular, or extra-curricular/club-related publications and/or productions, are nonpublic forums. As nonpublic forums, the content of these other student publications and productions can be regulated for legitimate pedagogical school-related reasons. School officials shall routinely and systematically review and, if necessary, restrict the content of all school-sponsored student media, except for those publications/productions listed above, prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. [DRAFTING NOTE: It is critical that the school officials actually engage in prior review/restraint and not just reserve the right to engage in such review/restraint. If the school officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a review/restraint may hold that this policy is not being implemented as written, and therefore the Board may be found to have lost the authority it attempted to preserve for its administrators. The Board shall provide school officials with guidance and training in order to implement this duty of review/restrain effectively and legally.]

[DRAFTING NOTE: Select Option B1, Option B-2, Option B-3, Option B-4, or Option B-5.]

[DRAFTING NOTE: The Board should select this option only if it has prohibited all nonpublic forum school-sponsored student publication/performance on Social Media, with the exception of nonpublic forum school-sponsored student media that is disseminated through District-approved Social Media that employs a secure



portal that restricts access to members of the school community through the use of a User ID and Password (or other form of biometric authentication security).]

[ ] Nonpublic forum school-sponsored student media may be published/performed only to members of the school community.

[END OF OPTION B-1]

[DRAFTING NOTE: The Board should select either Option B-2 or Option B-3 if it has authorized the limited use of District-approved Social Media to publish/perform nonpublic forum school-sponsored student media; as mentioned above, it is critically important that school officials routinely and consistently exercise their limited authority to engage in prior review/restraint with respect to the publication/performance of all nonpublic forum school-sponsored student media.]

[ ] Option B-2

[ ] While ordinarily nonpublic forum school-sponsored student media may be published/performed only to members of the school community, the following nonpublic forum student media may be published/performed outside the school community (i.e., to the general public): [Identify] ( ) high school newspaper [could substitute with the name of the newspaper] ( ) high school yearbook [could substitute with the name of the yearbook] ( ) [insert name(s) of specific school-sponsored student publications/productions]. ( ) See Board Policy 9160.

[END OF OPTION B-2]

Option B-3

While ordinarily nonpublic forum school-sponsored student media may be published/performed only to members of the school community, the Superintendent may authorize specific nonpublic forum student media to be published/performed outside the school community (i.e., to the general public). A student or group of students who wish to have his/her/their nonpublic forum student media published/performed outside the school community must submit to the Superintendent a request for prior written approval for such publication/performance.

[END OF OPTION B-3]

[ ] Option B-4

[ ] While nonpublic forum school-sponsored student media generally may be published/performed outside the school community (i.e., to the general public), the following nonpublic forum student media may be published/performed only to members of the school community: [Identify]. ( ) See Board Policy 9160.

[END OF OPTION B-4]

[ ] Option B-5

[ ] Nonpublic forum school-sponsored student media may be published/performed outside the school community (i.e., to the general public). ( ) See Board Policy 9160.

[END OF OPTION B-5]

[END OF OPTION B]

[ ] Option C [Select if the Board intends to identify specific student publications/productions to be limited-purpose public forums but wants to retain the authority to engage in limited and consistent prior review/restraint on the basis of four (4) identified reasons. School-sponsored publications/productions not listed are considered nonpublic forums and will be subject to routine prior review and restraint. This is the second most restrictive and permits some prior review/restraint involving what are otherwise limited-purpose public forums.]

The Board designates the following official, school-sponsored student media to be limited-purpose public forums:

[List all publications so designated]

-  
\_\_\_\_\_  
-  
\_\_\_\_\_  
-  
\_\_\_\_\_  
-  
\_\_\_\_\_  
-  
\_\_\_\_\_



As limited-purpose public forums, the student journalist, content-creators or performers associated with the above-listed publications and/or productions may address matters of concern and/or interest to their readers/viewers. The student journalists, content-creators and/or performers involved in the above-listed publications/productions have the right to determine the content of this student media. ( ) While designated as limited-purpose public forums, the listed publications/productions are not intended to address general matters of public concern and are not open to public comment.

School officials will not routinely and systematically restrict content of the publications and/or productions listed above prior to their publication/performance; however, school officials may review the content and reject an article/posting/publication/production due to one (1) of the following four (4) reasons:

- A. where poor grammar or writing is evident;
- B. where a legitimate question of age appropriateness of the material exists;
- C. where matters beyond the limited scope of the forum are included; and/or
- D. where the content involves unprotected speech.

[ ] The above-listed school-sponsored student publications/productions, while limited-purpose public forums, are not intended to address general matters of public concern and therefore are not open to public comment.

The listed publications and or production shall contain a notice to the reader/viewer that the material, while school-sponsored, is student directed and subject only to limited prior review. Given the listed student publications and/or productions have been designated as limited-purpose public forums, the school assumes no liability for the content beyond that covered by the school officials' limited prior review, and with editorial control comes responsibility. Student journalists, content-creators and performers are expected to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards.

[ DRAFTING NOTE: Select Option C-1, Option C-2, Option C-3, Option C-4, or Option C-5.]

[ ] Option C-1

[ DRAFTING NOTE: The Board should select this option only if it has prohibited all school-sponsored student publication/performance on Social Media, with the exception of school-sponsored student media that is disseminated through District-approved Social Media that employs a secure portal that restricts access to members of the school community through the use of a User ID and Password (or other form of biometric authentication security.)

[ ] School-sponsored student media may be published/performed only to members of the school community.

[ END OF OPTION C-1 ]

[ DRAFTING NOTE: The Board should select either Option C-2 or Option C-3 if it has authorized the limited use of District-approved Social Media to publish/perform school-sponsored student media; as mentioned below, it is critically important that school officials routinely and consistently exercise their limited authority to engage in prior review/restraint with respect to the publication/performance of all school-sponsored student media.]

[ ] Option C-2

[ ] While ordinarily school-sponsored student media may be published/performed only to members of the school community, the following student media may be published/performed outside the school community (i.e., to the general public): \_\_\_\_\_ [identify] ( ) high school newspaper [could substitute with the name of the newspaper] ( ) high school yearbook [could substitute with the name of the yearbook] ( ) \_\_\_\_\_ [insert name(s) of specific school-sponsored student publications/productions]. ( ) See Board Policy 9160.

[ END OF OPTION C-2 ]

Option C-3

While ordinarily school-sponsored student media may be published/performed only to members of the school community, the Superintendent may authorize specific student media to be published/performed outside the school community (i.e., to the general public). A student or group of students who wish to have his/her/their student media published/performed outside the school community must submit to the Superintendent a request for prior written approval for such publication/performance.

[ END OF OPTION C-3 ]

[ ] Option C-4



While school-sponsored student media generally may be published/performed outside the school community (i.e., to the general public), the following student media may be published/performed only to members to the school community: \_\_\_\_\_ [Identify]. (.) See Board Policy 9160.

[END OF OPTION C-4]

Option C-5

School-sponsored student media may be published/performed outside the school community (i.e., to the general public). (.) See Board Policy 9160.

[END OF OPTION C-5]

All other school-sponsored student publications and productions, including classroom and/or other curricular or extra-curricular/club-related publications and/or productions, are nonpublic forums. As nonpublic forums, the content of these other student publications and productions can be regulated for legitimate pedagogical school-related reasons. School officials shall routinely and systematically review and, if necessary, restrict the content of all school-sponsored student media except those publications/productions listed above, prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. [DRAFTING NOTE: It is critical that the school officials actually engage in prior review/restraint and not just reserve the right to engage in such review/restraint. If the school officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a review/restraint may hold that this policy is not being implemented as written, and therefore the Board may be found to have lost the authority it attempted to preserve for its administrators. The Board should provide school officials with guidance and training in order to implement this duty of review/restraint effectively and legally.]

[END OF OPTION C]

Option D [Select if the Board intends all school-sponsored student media (i.e. publications/production) to be nonpublic forums - i.e., subject to routine prior review/restraint. This is the most restrictive option.]

[DRAFTING NOTE: for Options D-1 through D-5: It is critical that the school officials actually engage in prior review/restraint and not just reserve the right to engage in such review/restraint. If the school officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a review/restraint may hold that this policy is not being implemented as written, and therefore the Board will be considered to have lost the authority it attempted to preserve for its administrators. The Board should provide school officials with guidance and training in order to implement this duty of review/restraint effectively and legally.]

All school-sponsored student media are nonpublic forums. While students may address matters of interest or concern to their readers/viewers, as nonpublic forums, the style and content of the student publications and productions can be regulated for legitimate pedagogical, school-related reasons. School officials shall routinely and systematically review and, if necessary, restrict the type and/or content of all school-sponsored student media prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. Legitimate pedagogical concerns are not confined to academic issues but include the teaching by example of the shared values of a civilized social order, which consists of not only independence of thought and frankness of expression but also discipline, courtesy/civility, and respect for authority. School officials may prohibit further speech that is grammatically incorrect, poorly written, inadequately researched, biased or prejudiced, vulgar, profane, or unsuitable for immature audiences.

[DRAFTING NOTE: Select Option D-1, Option D-2, Option D-3, Option D-4, or Option D-5.]

Option D-1

[DRAFTING NOTE: The Board should select this option only if it has prohibited all school-sponsored student publication/performance on Social Media, with the exception of school-sponsored student media that is disseminated through District-approved Social Media that employs a portal that restricts access to members of the school community through the use of a User ID and Password (or other form of biometric authentication security).]

School-sponsored student media may be published/performed only to members of the school community.

[END OF OPTION D-1]

[DRAFTING NOTE: The Board should select either Option D-2 or Option D-3 if it has authorized the limited use of District-approved Social Media to publish/perform school-sponsored media; as mentioned above, it is critically important that school officials routinely and consistently exercise their authority to engage in prior review/restraint with respect to the publication/performance of all school-sponsored student media.]

Option D-2

While ordinarily school-sponsored student media may be published/performed only to members of the school community, the following student media may be published/performed outside the school community (i.e., to the general public): \_\_\_\_\_ [Identify] (.) high school newspaper [could substitute with the name of the newspaper]. (.) high school yearbook [could substitute with the name of the yearbook]. (



\_\_\_\_\_ [insert name(s) of specific school-sponsored student publications/productions]. ( ) See Board Policy 9160.

[END OF D-2]

Option D-3

[ ] While ordinarily school-sponsored student media may be published/performed only to members of the school community, the Superintendent may authorize specific student media to be published/performed outside the school community, (i.e., to the general public). A student or group of students who wish to have his/her/their student media published/performed outside the school community must submit to the Superintendent a request for prior written approval for such publication/performance.

[END OF OPTION D-3]

Option D-4

[ ] While school-sponsored student media generally may be published/performed outside the school community (i.e., to the general public), the following student media may be published/performed only to members of the school community: \_\_\_\_\_ [identify]. ( ) See Board Policy 9160.

[END OF OPTION D-4]

Option D-5

[ ] School-sponsored student media may be published/performed outside the school community (i.e., to the general public). ( ) See Board Policy 9160

[END OF OPTION D-5]

[END OF OPTION D]

[END OF OPTIONS A THROUGH D]

[NOTE: The following paragraph is optional.]

Students ( ) staff will monitor comments posted to social media platforms/sites that have been approved under Policy 7544 for use as school-sponsored student media. Comments will be monitored to verify the age-appropriateness of the material, whether unprotected speech is involved, and whether there is compliance with posted rules for use of the forum and the platform's/site's applicable terms of service. Comments that are not age-appropriate for the student-audience for the school-sponsored publication, constitute unprotected speech, and/or violate the posting rules for the use of the forum and/or the platform's/site's applicable terms of service will be removed. The review of posted comments will be conducted in a viewpoint neutral manner and consistent with State and Federal law.

Students shall not be disciplined and/or retaliated against for exercising and/or asserting their free speech rights as defined in this policy. Nothing in this policy, however, restricts the Board's ability to impose post-publication/performance discipline related to a student engaging in the impermissible publication/performance of unprotected speech.

[DRAFTING NOTE: CHOOSE ONE (1) OF THE FOLLOWING THREE (3) OPTIONS RE: ADVERTISING.]

Option #1 [Select if the Board intends to permit advertising in some or all school-sponsored student media but requires a school employee/official to pre-approve the advertisements.]

Advertising is permitted in ( ) all school-sponsored student media ( ) the following school-sponsored student publication/productions: [identify publications/productions]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any advertisements must be consistent with Policy 9700.01 ( ) AG 9700B.

Advertisements submitted for publication or inclusion in a production shall be reviewed by ( ) the class/activity advisor ( ) the building principal ( ) the Superintendent ( ) school officials [end of options] for a determination that they are appropriate for juveniles. The ( ) Superintendent ( ) Board retains the final authority to determine whether an advertisement is appropriate and will be included in a publication/production. Advertisements may be rejected for legitimate pedagogical school-related reasons unrelated to the viewpoint of the advertiser (e.g., the advertisement encourages action that would endanger the health and safety of students).

Option #2 [Select if the Board intends to permit advertising in some or all school-sponsored student media that are designated to be limited-purpose public forums, and the students involved in the specific



publications/productions will be responsible for accepting or rejecting the advertisements.]

Advertising is permitted in ( ) all school-sponsored student media that have been designated as limited-public forums, ( ) the following school-sponsored student media that have been designated as limited-purpose public forums: [identify publications/productions]

Any advertisements must be consistent with Policy 9700.01 (✓) and AG 9700B.

The students in the class(es)/activity(ies) associated with ( ) all school-sponsored student media that have been designated as limited-purpose public forums ( ) the above-listed student media [end of option] will determine whether to include advertisements in the publications/productions. Acceptance or rejection of specific advertisements is within the control of the publication/production staff, which may except those for activities, products, or services that are illegal for students and/or that violate State or Federal law.

(✓) The publication/production staff is encouraged to consider the age appropriateness of the ads they select.

[ ] Option #3 [Select if the Board intends to prohibit advertisements in all student publications/productions.]

Advertising is not permitted in school-sponsored student media.

[END OF OPTIONS RE: ADVERTISING]

### General Prohibitions

Regardless of their status as non-public or limited-purpose public forums, the Board prohibits publications, productions, and advertisements that:

- A. promote, favor, or oppose any candidate for election or the adoption of any bond issue, proposal, or question submitted at any election;
- B. (✓) fail to identify the student or organization responsible for the publication/performance;
- C. (✓) solicit funds for non-school organizations or institutions when such solicitation has not been approved by the Board.

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### 5722—SCHOOL-SPONSORED PUBLICATIONS AND PRODUCTIONS

The Board of Education may sponsor student publications and productions as means by which students learn, under adult direction, the rights and responsibilities of public expression in a free society.

For purposes of this policy, "publications" shall include any audio, visual, or written materials such as tapes, banners, films, pamphlets, notices, newspapers, books, or other like materials. "Productions" shall include theatrical performances as well as impromptu dramatic presentations.

Such publications and productions also play a vital role in the school program by:

- A. interpreting students and the school to the community;
- B. servng as a public relations media;
- C. developing skills in communicating via the mass media;
- D. developing acceptable methods for preserving the constitutional provision of free speech.

In sponsoring a student publication or production, the Board is mindful of the fact that it could be available to any student attending this school, and must, therefore, generally be suitable for all students.

Issues on which opposing points of view have been promulgated by responsible opinion may be introduced in a school-sponsored publication provided equal opportunity is given to present each view and provided further that the material generally is acceptable to this community.

Advertising is permitted in school newspapers, yearbooks, programs, etc. which are published by student organizations. Permission should be given by the principal.

The Board reserves the right to designate and prohibit the publications or productions which are not protected by the right of free expression because they are disruptive of the educational environment and/or violate the rights of others. Such unprotected materials are those which

- A. are grossly prejudicial to an ethnic, religious, racial, or other delineated group;
- B. libel any specific person or persons;
- C. seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view;
- D. advocate the use or advertise the availability of any substance or material which may reasonably be believed to:
  1. constitute a direct and substantial danger to the health of students;
  2. contain obscenity or material otherwise deemed to be harmful to impressionable students who may receive them;
  3. incite violence, advocate the use of force or urge the violation of law or school regulations;

~~The Board also prohibits publications and productions which:~~

- ~~A. fail to identify the student or organization responsible for distribution;~~
- ~~B. solicit funds for nonschool organizations or institutions when such solicitations have not been approved by the Board;~~
- ~~C. promote, favor, or oppose any candidate for election to the Board or the adoption of any bond issue, proposal, or question submitted at any election.~~

~~The decision as to whether or not something is published or produced shall be made by the advisor with appeal to the principal and Superintendent.~~

Legal

West Virginia Board of Education Policy 4373

**Policy 3139.01 - Suspension (Revised)**

**Policy 4139.01 - Suspension (Revised)**

**Policy 4213 - Student Supervision and Welfare by Service Staff (Revised)**

According H.B. 4562, effective, June 7, 2022, upon allegations that a staff member jeopardized the health, safety, welfare, or learning environment of students, at the start of the investigation into the allegation, the staff member shall be suspended, placed on administrative leave, or reassigned to duties that do not involve direct interaction with students. The principal shall report any allegations to the superintendent within twenty-four (24) hours. The principal's report to the superintendent is in conjunction with any other mandatory reports that must be made as a mandatory reporter of suspected child abuse or neglect.

If a staff member is charged with committing a felony, a misdemeanor with a rational nexus to the performance of the staff member's job, or child abuse, the Board shall, pending final disposition of the charges, suspend the staff member, place them on administrative leave, or reassign them to duties that do not involve direct interaction with students.

These revised policies reflects current West Virginia Code and should be adopted to have accurate policies.

**Policy 3242 - Professional Learning for Educators (Revised)**

WV policy 5500 was amended effective July 11, 2022 and as a result, this policy has been revised.

This revised policy reflects current WV Policy 5500 and should be adopted to have accurate policies.

**Policy 4124.01 - Probationary Contract (Technical Correction)**

A typographical error was corrected changing "ensuring" to "ensuing".

This revised policy reflects current West Virginia Code and should be adopted to have accurate polici

**Policy 4132 - Vacancies - Service Positions (Revised)**

**Policy 3132 - Vacancies - Professional Positions (Revised)**

As a result of passage of H.B. 4489, effective June 6, 2022, all professional personnel, service personnel and extracurricular positions must be posted to the WVDE Statewide Job Bank website.

These revised policies reflects current West Virginia Code and should be adopted to have accurate policies.

**Policy 4220 - Staff Evaluation (Revised)**

This policy was revised as a result of the changes to WV policies 5300 and 5314

This revised policy should be adopted to have accurate policies.






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Section Vol 14, No. 2 August 2022 Drafts

Title Copy of STUDENT SUPERVISION AND WELFARE BY SERVICE PERSONNEL

Code po4213

Status

Adopted August 1, 2007 

Last Revised July 6, 2020

#### 4213 - **STUDENT SUPERVISION AND WELFARE BY SERVICE PERSONNEL**

Service personnel shall maintain a standard of care for the supervision, control, and protection of students commensurate with their assigned duties and responsibilities under West Virginia law and are expected to establish and maintain appropriate staff/student boundaries that are consistent with their legal and ethical duties of care for students.

The Superintendent shall maintain and enforce the following standards:

- A. An administrator who transports students in a private vehicle shall do so in accordance with Policy 8660.
- B. A service personnel staff member shall report to a building administrator any accident, safety hazard, or other potentially harmful condition or situation s/he detects in a reasonably prompt manner.
- C. A service personnel staff member shall immediately report to a building administrator any knowledge of threats of violence by students.
- D. A service personnel staff member shall not send students on any personal errands for the benefit of the staff member or other school employees.

- E. A service personnel staff member shall not associate or fraternize with students at any time in any manner that may give the appearance of impropriety, including, but not limited to, the creation of or participation in any situation or activity that could reasonably be considered abusive or sexually suggestive or involve harmful substances such as illegal drugs, alcohol or tobacco. Any romantic, sexual or other inappropriate conduct, including mere communication of such nature, with a student by any staff member will subject the offender to disciplinary action by the Board up to and including termination of employment.
- F. If a student approaches a service employee to seek advice or to ask questions regarding a personal problem related to sexual behavior, substance abuse, mental or physical health, and/or family relationships etc., the service employee may attempt to assist the student by facilitating contact with certified or licensed individuals in the District or community who specialize in the assessment, diagnosis, and treatment of the student's stated problem. However, under no circumstances should a service employee attempt, unless properly licensed and authorized to do so, to counsel, assess, diagnose, or treat the student's problem or behavior, nor should such classified staff member inappropriately disclose personally identifiable information concerning the student to third persons unless specifically authorized to do so by law. A report of the service employee's actions with regard to the student shall be made to the school principal or other appropriate supervisory person no later than the end of the following school day.
- G. A student shall not be required to perform work or services that may be detrimental to his/her health.
- H. Service personnel are strongly discouraged from engaging students on interactive media sites, such as Facebook, Twitter, MySpace, YouTube, Skype, blogs, etc. unless such communication has been specifically authorized by the student's principal.
- I. Service personnel are prohibited from electronically transmitting any personally identifiable image of a student(s), including video, photographs, streaming video, etc. via email, texting, social media and/or online networking media, such as Facebook, Twitter, YouTube, MySpace, Skype, blogs, etc. unless such transmission has been made in connection with a pre-approved curricular matter or co-curricular/extracurricular event or activity such as a school-sponsored publication or production in accordance with Policy 5722.
- J. Since most information concerning a child in school, other than directory information as described in West Virginia Department of Education policy 4350 and Policy 8330, is confidential under Federal and State laws, any staff member who shares confidential information with another person not authorized

to receive the information may be subject to discipline. This includes, but is not limited to, information concerning assessments, grades, behavior, family background, and alleged child abuse.

A staff member or volunteer who suspects child abuse or neglect, or observes a child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than twenty-four (24) hours after suspecting this abuse or neglect, report the circumstances, or cause a report to be made, to the Department of Health and Human Resources, and shall also notify the person in charge of the school or facility of such suspicion. Upon such notification, the person in charge of the school or facility may supplement the report or cause an additional report to be made. In cases where the reporter believes that the child suffered serious physical abuse, or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law enforcement agency having jurisdiction to investigate the complaint Policy 8462.

Upon allegations that a staff member jeopardized the health, safety, welfare, or learning environment of students, at the start of the investigation into the allegation, the staff member shall be suspended, placed on administrative leave, or reassigned to duties that do not involve direct interaction with students. The principal shall report any allegations to the Superintendent within twenty-four (24) hours. The principal's report to the superintendent is in conjunction with any other mandatory reports that must be made as a mandatory reporter of suspected child abuse or neglect.

If a staff member is charged with committing a felony, a misdemeanor with a rational nexus to the performance of the staff member's job, or child abuse, the Board shall, pending final disposition of the charges, suspend the staff member, place them on administrative leave, or reassign them to duties that do not involve direct interaction with students.

Pursuant to State law, any staff member or other person who has been found guilty of sexual assault in the first degree or sexual abuse in the first degree are prohibited from supervising or being responsible for supervising groups of children, including but not limited to religious organizations, Boy Scouts, Girl Scouts, 4-H organizations, sporting and scholastic teams, music, sporting, and theatre groups and camps, and summer day camps.

Revised 1/4/10

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## Legal

WV Code 62-12-26(c)

West Virginia Board of Education policy 4350

West Virginia Board of Education policy 4336

WV Code 49-6A-2


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Section Vol 14, No. 2 August 2022 Drafts

Title Copy of PROFESSIONAL STAFF DEVELOPMENT

Code po3242

Status

Adopted August 1, 2007 

Last Revised February 1, 2021

**3242 - PROFESSIONAL STAFF DEVELOPMENT**

**Purpose**

Schools exist to facilitate student learning. Ongoing professional staff development is essential to enhancing improved teaching and student learning. The purpose of this policy is to assist the coordination, development, and evaluation of high-quality professional learning programs for District educators.

**District Responsibility**

The District must support, monitor, and ensure the fidelity of the implementation of professional learning experiences that are aligned to West Virginia State Board of Education **Goals for Professional Learning and West Virginia Professional Learning Standards located on the West Virginia Department of Education ("WVDE") website.** outlined in West Virginia Board of Education policy 5500, Appendix B and as part of the District strategic plan. It is also the responsibility of the District to establish a Professional Staff Development Council.

The District **plan shall be developed by** use recommendations from the Local Staff Development Council (WV Code 18A-3-8) **and** to develop a District professional learning plan that is incorporated into the District Strategic Plan using data from:

- A. the District's Strategic Plan Needs Assessment;

- B. the District's professional learning plan, or as documented in the West Virginia Support for Improving Professional Practice ("WVSIPP") located on the WVDE website section of the District strategic plan;
- C. West Virginia State Board of Education policy 5310, Performance Evaluation of School Personnel;
- D. professional teaching standards;
- E. aggregated student data from West Virginia State Board of Education policy 2340, WV Measures of Academic Progress; and
- F. Student evidence of learning from utilization of the formative assessment process

Further, the District must implement a professional and personalized learning plan that includes high-quality professional and personalized learning experiences to support all educators and personnel in the delivery of high-quality educational programming as part of the District's Strategic Plan. The plan should align, be incorporated into, and complement the District's Strategic Plan and provide that:

- A. educators have access to high quality professional and personalized learning experiences that focus on individual professional growth of educators, student need based on acquired data, and school-wide goals for professional and personalized learning goals;
- B. educators are engaged in learning with educator engagement opportunities to learn alongside colleagues through a collaborative models such as professional learning communities to improve individual teaching practices, support student learning and well-being, and foster school-wide growth;
- C. school-based professional learning communities examine educator participation in school and classroom-based examination of student data to increase student achievement and well-being;
- D. school budgets budget allocations to support professional and personalized learning;
- E. flexible and creative scheduling creates time for schedules to ensure consistent opportunities for educators to participate in professional learning communities during the workday; and



- F. focused professional learning offerings **are in i**available in both individualized and school-based settings rather than in large-scale settings.

As part of the District's Strategic Plan, the District must submit its professional learning plan to the West Virginia State Board of Education annually as directed by the **WVDE** West Virginian Department of Education.

The Board shall provide additional compensation to teachers who, in addition to teaching duties, assume other duties for new teacher induction, improving professional practices, and further professional growth among teachers.

The Superintendent shall establish a professional staff development council comprised of proportional representation from the major school levels and from vocational, special education, and other specialties in proportion to their employment numbers in the District. Nominations of instructional personnel to serve on the District staff development council may be submitted by the faculty senates of the district to the superintendent who shall prepare and distribute ballots and tabulate the votes. The staff development council shall consist of between nine (9) and fifteen (15) members at the discretion of the superintendent based on the size of the district. The council has the final authority to propose staff development programs for their peers based upon rules established by statute and the council on professional education.

The Superintendent **or a designee** has an advisory, nonvoting role on the council.

Revised 10/4/10

Revised 5/7/12

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Legal

WV Code 18A-3-8

WV State Board of Education policy 5500




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Section Vol 14, No. 2 August 2022 Drafts

Title Copy of STAFF EVALUATION

Code po4220

Status 

Adopted January 4, 2010

#### 4220 - **STAFF EVALUATION**

The Board of Education through the powers derived from the West Virginia Code, is responsible for the employment and discharge of all personnel. To carry out this responsibility, it delegates to the Superintendent the function of establishing and implementing a program of personnel assessment. **for all service employees.** This policy shall apply to all service personnel, as defined by WV Code 18A-1-1(e), and including nonteaching school employees who are not included in the meaning of teacher as defined by State code and who service the school(s) in a nonprofessional capacity.

#### **All service personnel staff shall be evaluated on the following performance standards:**

- A. **work habits: observation of work hours, attendance, safety practices, meeting deadlines, flexibility, taking the initiative, and positive attitude;**
- B. **performance: work judgment, planning and organizing, quality of work, taking responsibility, following instructions, efficiency under stress, and the operation and care of equipment; and**
- C. **professional learning: knowledge of job responsibilities and participation in job-related trainings.**

It is the purpose of the program of staff assessment to:

- A. strive for the improvement of the total County program;
- B. stress the importance of personal improvement on the part of individual professional staff members so that each student may be provided a



quality education and/or service;

C. ensure the continuous improvement of administrative and supervisory services provided service personnel staff members;

D. establish a process of continuous and systematic service personnel staff member-evaluation.

The staff evaluation program shall aim at the early identification of specific areas in which the individual service personnel staff member needs help so that appropriate assistance may be provided. A supervisor offering suggestions for improvement to a service personnel staff member shall not release that service personnel staff member from the responsibility to improve. If a service personnel staff member, after receiving a reasonable degree of assistance, fails to perform his/her assigned responsibilities in a satisfactory manner, after being provided an evaluation and reasonable opportunity to improve, dismissal or non-renewal procedures may be invoked. In such an instance, all relative evaluation documents may be used in the proceedings.

All persons conducting evaluations shall receive training in completing evaluations, conducting observations and conferences, writing and monitoring improvement plans, and in management and evaluation skills.

 All evaluators ( ) may ( ) shall [end of option] be trained to conduct the evaluation of service personnel

In an effort to ensure that all employees have a full understanding of the evaluation policy and procedures, an evaluation orientation shall be convened at the beginning of the employment term. The orientation shall be held prior to the beginning of the instructional term. Employees shall be provided a copy of the evaluation instruments and procedures.

Evaluations shall be conducted of each service personnel staff member. A service personnel staff member shall be given a copy of any documents relating to his/her performance which are to be placed in the personnel file. The employee shall sign the evaluation form denoting the supervisor has reviewed the evaluation with the employee and the employee has received a copy. The signature does not imply concurrence with the findings. The employee also has the right to attach a statement to the evaluation.

Legal West Virginia Board of Education policy 5314

WV Code 18A-2-12, WV State Board of Education Policy 5330








Book Policy Manual

Section Vol 14, No. 2 August 2022 Drafts

Title Copy of SUSPENSION

Code po4139.01

Status

Adopted August 1, 2007 

Last Revised February 1, 2021

#### 4139.01 - **SUSPENSION**

The Superintendent, subject only to the approval of the Board, shall have the authority to suspend school personnel. The suspension may be with or without pay.

The Superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the Superintendent with the Board of Education and such a period of suspension shall not exceed thirty (30) working days unless extended by order of the Board.

The Board may suspend or dismiss any person in its employment at any time for:

- A. immorality;
- B. incompetency;
- C. cruelty;
- D. insubordination;
- E. intemperance;
- F. willful neglect of duty;

- G. unsatisfactory performance;
- H. a finding of abuse by the Department of Health and Human Resources in Accordance with WV Code 49-1-1 et seq.;
- I. conviction of a misdemeanor or a guilty plea or a nolo contendere plea to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job;
- J. the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation.

The charges shall be stated in writing served upon the employee within two (2) days of presentation of said charges to the Board. The employee so affected shall be given an opportunity, within five (5) days of receiving such written notice, to request, in writing, a level three (3) hearing and appeals pursuant to WV Code 6C-2-1 et seq. (Grievance Procedure), except that dismissal for a finding of abuse or the conviction of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse or guilty plea or plea of nolo contendere to a felony charge is not by itself grounds for a grievance proceeding. An employee charged with the commission of a felony may be reassigned to duties that do not involve direct interaction with students pending final disposition of the charges.

The Board has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted. The Board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

**Further, upon allegations that a staff member jeopardized the health, safety, welfare, or learning environment of students, at the start of the investigation into the allegation, the staff member shall be suspended, placed on administrative leave, or reassigned to duties that do not involve direct interaction with students. The principal shall report any allegations to the Superintendent within twenty-four (24) hours. The principal's report to the superintendent is in conjunction with any other**

**mandatory reports that must be made as a mandatory reporter of suspected child abuse or neglect.**

**If a staff member is charged with committing a felony, a misdemeanor with a rational nexus to the performance of the staff member's job, or child abuse, the Board shall, pending final disposition of the charges, suspend the staff member, place them on administrative leave, or reassign them to duties that do not involve direct interaction with students.**

It shall be the duty of the Superintendent to report an employee that has been suspended or dismissed or resigned during the course of an investigation in accordance with this policy and WV Code 18A-2-8. Including the rationale for the suspension or dismissal, to the State Superintendent.

Pursuant to sState law, it is the responsibility of the State Superintendent to create and maintain a database for all reported individuals. This database shall be confidential and will be accessible to the Superintendent and Human Resource Director.

**\*All language contained in this policy is taken directly from the statutes listed below and does not reflect the independent judgment or intent of the Board of Education.**

Revised 4/21/09

Revised 12/16/19

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WV Code 18A-2-7 and 18A-2-8






Book Policy Manual

Section Volume 14, No.1 - February 2022 Draft

Title Copy of PROBATIONARY CONTRACT

Code po4124.01

Status 

Adopted January 4, 2010

Last Revised July 7, 2014

4124.01 - **PROBATIONARY CONTRACT**

All service personnel with less than three (3) year's experience shall hold a probationary contract.

The Superintendent at a meeting of the Board of Education on or before **April 15th** May 1st of each year shall provide in writing to the Board a list of all probationary service personnel that s/he recommends to be rehired for the next ensuring school year. The Board shall act upon the Superintendent's recommendations at that meeting. Any service personnel employee who is not rehired by the Board at that meeting shall be notified in writing by certified mail, return receipt requested, to such person's last known address within ten (10) days following said Board meeting, of not having been rehired or not having been recommended for rehiring.

Any probationary service personnel employee who receives notice that s/he has not been recommended for rehiring may within ten (10) days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the Board. Such hearing shall be held at the next regularly scheduled Board meeting or at a special meeting of the Board called within thirty (30) days of the request for hearing. At the hearing, the reasons for the non-rehiring must be shown.

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WV Code 18A-2-8a

Book Policy Manual

Section Vol 14, No. 2 August 2022 Drafts

Title Copy of VACANCIES – SERVICE POSITIONS

Code po4132

Status 

Adopted August 1, 2007

Last Revised September 1, 2021

#### 4132 - VACANCIES – SERVICE POSITIONS

Openings in established, existing or newly created positions shall be processed as follows:

- A. The Board of Education shall post and date vacancy notices which shall be subject to the following:
1. The notices shall be posted in a conspicuous working places including on any website maintained by or available for by the Board **on the County Website** for all service personnel to observe for at least five (5) working days. **Notices may also be posted to the West Virginia Department of Education Job Bank Website.** Notice shall also be posted to the West Virginia Department of Education Statewide Job Bank website. The job bank shall consist of the following for the District: (a) A list of the names, qualifications, and contact information of all service and extracurricular personnel who have been terminated because of a reduction in force, except personnel who have requested in writing that they not be listed in the job bank; (b) A list of service personnel and extracurricular personnel for which the district is seeking applicants; and (c) A total compensation statement for each listed position. Compensation is defined as "Direct compensation" meaning base salary and incentives that are provided regularly and consistently and "Indirect compensation" meaning any non-cash benefit provided to an



employee, including, but not limited to health insurance; dental insurance; vision insurance; life insurance; disability income protection; retirement benefits; employer student loan contributions or other employee assistance programs; educational benefits; childcare; relocation benefits; and vacation leave, sick leave, and any other form of paid time-off. "Total compensation statement" means a list of direct and indirect compensation provided or offered for a position, including an itemized list of the types of compensation provided or offered and a cumulative total of the value of all compensation provided or offered.

The Board shall provide the information listed in (a), (b) and (c) above to the State Board in a prompt manner. The job bank shall be accessible electronically to the District and to individuals on a read-only basis, except that the District shall have the capability of editing information for the District and shall be responsible for maintaining current information on the District lists.

2.

3.

However, should there be any discrepancy between or among the postings, the printed postings in the working places of service personnel employees shall remain the official posting to which all applicants must comply.

A service person with itinerant status may be assigned to a different work site upon written notice ten (10) days prior to the reassignment without the consent of the employee and without posting the vacancy. At the conclusion of each school year, the County Board shall post pursuant to WV Code 18A-4-8b, all positions that have been filled without posting by a service person with itinerant status.

4. The notice shall be posted within twenty (20) working days of the position openings and shall include the job description, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. The Board shall not declare a position vacant and post a job opening sooner than ten (10) days following the death of an individual employed in that position.

5. All vacancies in existing or newly created positions shall be filled within twenty (20) working days from the closing date of the job posting for the position. The Board shall notify the successful applicant as soon as possible after the Board makes a hiring decision regarding the posted position.
  6. After the five (5) day minimum posting period all vacancies shall be filled within twenty (20) working days from the posting date notice.
  7. Postings for vacancies shall be written so as to ensure that the largest possible pool of qualified applicants may apply.
  8. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.
- B. Nothing provided herein shall prevent the Board from eliminating a position due to lack of need.
- C. Service employees who have been placed on the preferred recall list shall be provided with notice by certified mail to their last known address of all vacancies. It shall be the duty of each service personnel on the preferred recall list to notify the Board of any change in address. Any employee failing in this duty shall be notified by certified mail to his/her last known address that they will be removed from the preferred recall list unless good cause is shown, within thirty (30) days, as to why they should not be removed from the preferred recall list. If good cause is not shown within the prescribed time, the Superintendent shall remove the employee from the recall list. If an employee accepts full-time employment with another County Board s/he shall be removed from the preferred recall list. Provided, however, the refusal of an employee on the preferred recall list to accept an offered position shall be grounds for removal from the preferred recall list unless the refusal is for reasons deemed compelling.
- D. The Board shall notify all service personnel on the preferred list of all position openings that exist from time to time. The notification shall be sent annually, with written receipt notification documented by the Superintendent, and shall list instructions to access job postings on any website maintained by or available for the use of the Board. If an employee accepts full-time employment with another district s/he shall be removed from the preferred recall list. The refusal of an employee on the preferred recall list to accept an offered position shall be grounds for removal from the preferred recall list unless the refusal is for reasons deemed compelling.\*

\*All language in this policy comes directly from the statutes listed below and does not reflect the independent judgment or intent of the Board of Education.

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A.

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WV Code 18A-4-21

WV Code 18A-4-8b

WV Code 18A-4-8b(g)

WV Code 18A-4-8(r)

Book Policy Manual

Section 3000 Professional Staff

Title Copy of SUSPENSION

Code po3139.01

Status

Adopted August 1, 2007

Last Revised February 1, 2021



### 3139.01 - **SUSPENSION**

The Superintendent, subject only to the approval of the Board, shall have the authority to suspend school personnel. The suspension may be with or without pay.

The Superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the Superintendent with the Board of Education and such period of suspension shall not exceed thirty (30) working days unless extended by order of the Board.

The Board may suspend or dismiss any person in its employment at any time for:

- A. immorality;
- B. incompetency;
- C. cruelty;
- D. insubordination;
- E. intemperance;
- F. willful neglect of duty;



- G. unsatisfactory performance;
- H. a finding of abuse by the Department of Health and Human Resources in accordance with WV Code 49-1-1 et seq.;
- I. conviction of a misdemeanor or a guilty plea or a nolo contendere pleas to a misdemeanor charge that has a rational nexus between the conduct and the performance of the employee's job;
- J. the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation.

The charges shall be stated in writing served upon the employee within two (2) days of presentation of said charges to the Board. The employee so affected shall be given an opportunity, within five (5) days of receiving such written notice, to request, in writing, a level three (3) hearing and appeals pursuant to WV Code 6C-2-1 et seq. (Grievance Procedure), except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself grounds for a grievance proceeding. An employee charged with the commission of a felony may be reassigned to duties that do not involve direct interaction with students pending final disposition of the charges.

The Board has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may be necessary to take steps to suspend or dismiss any person on its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted. The Board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

**Further, upon allegations that a staff member jeopardized the health, safety, welfare, or learning environment of students, at the start of the investigation into the allegation, the staff member shall be suspended, placed on administrative leave, or reassigned to duties that do not involve direct interaction with students. The principal shall report any allegations to the superintendent within twenty-four (24) hours. The principal's report to the superintendent is in conjunction with any other mandatory reports that must be made as a mandatory reporter of suspected child abuse or neglect.**

**If a staff member is charged with committing a felony, a misdemeanor with a rational nexus to the performance of the staff member's job, or child abuse, the Board shall, pending final disposition of the charges, suspend the staff member, place them on administrative leave, or reassign them to duties that do not involve direct interaction with students.**

It shall be the duty of the Superintendent to report any employee that has been suspended or dismissed or resigned during the course of an investigation in accordance with this policy and WV Code 18A-2-8, including the rationale for the suspension or dismissal, to the State Superintendent.

Per State law, it is the responsibility of the State Superintendent to create and maintain a database for all reported individuals. This database shall be confidential and will be accessible to the Superintendent and Human Resource Director.\*

**\*All language in this policy comes directly from the statutes listed below and is mandated by those statutory provisions.**

Revised 4/21/09

Revised 12/16/19

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Legal                      WV Code 18A-2-7 and 18A-2-8  
                                    WV Code 49-1-1 et seq.




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Book Policy Manual

Section Vol 14, No. 2 August 2022 Drafts

Title Copy of VACANCIES – PROFESSIONAL POSITIONS

Code po3132

Status 

Adopted August 1, 2007

Last Revised September 1, 2021

**3132 - VACANCIES – PROFESSIONAL POSITIONS**

Openings in established, existing, or newly created positions shall be processed as follows:

- A. The Board of Education shall post and date vacancy notices of each opening at least once. However, at its discretion, the Board may post an opening for a position more than once in order to attract more qualified applicants.

If no applicant meets the qualifications set forth in the job posting, the Board may continue to post or repost without limitation.

The Superintendent shall have the authority to determine whether a professional position will be reposted. These provisions shall apply to both regular professional positions and extra-curricular professional positions.

- 1. Each notice shall be posted on the County Website for all professional personnel to observe for at least five (5) working days. **Notice may also be posted to the West Virginia Department of Education Job Bank, website, and/or local newspaper(s).**
- 2. **Notice also shall be posted to the West Virginia Department of Education Statewide Job Bank website. The job bank shall consist of the following the District:**



- a. A list of the names, qualifications, and contact information of all professional and extra-curricular personnel who have been terminated because of a reduction in force, except personnel who have requested in writing that they not be listed in the job bank;
  - b. A list of professional and extra-curricular positions for which the District is seeking applicants; and
  - c. A total compensation statement for each listed position. Compensation is defined as "direct compensation" meaning base salary and incentives that are provided regularly and consistently and "indirect compensation" meaning any non-cash benefit provided to an employee, including, but not limited to health insurance; dental insurance; vision insurance; disability income protection; retirement benefits; employer student loan contributions or other employee assistance programs; educational benefits; childcare; relocation benefits; and vacation leave, sick leave, and any other form of paid time-off. "Total compensation statement" means a list of direct and indirect compensation provided or offered for a position, including an itemized list of the types of compensation provided or offered and a cumulative total of the value of all compensation provided or offered.
3. The Board shall provide the information listed above in a., b., and c. above to the WVBE in a prompt manner. The job bank shall be accessible electronically to the District and to individuals on a read-only basis, except that the District shall have the capability of editing information for the District and shall be responsible for maintaining current information on the District lists.
  4. Notice  shall  may also be posted to the  District website.  West Virginia Department of Education Job Bank website.  \_\_\_\_\_ [newspaper(s)].[end of option]

However, should there be any discrepancy between or

**among the postings, the printed postings in the working places of professional employees shall remain the official posting with which all applicants must comply.**

5. At least one (1) notice shall be posted within twenty (20) working days of the position openings and shall include the job description. The Board shall not declare a position vacant and post a job opening sooner than ten (10) days following the death of an individual employed in that position.
  6. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job.
  7. Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply.
  8. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.
- B. No vacancy shall be filled until after the five (5) day minimum posting period of the most recent posted notice of the vacancy.
- C. If one (1) or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the Board within thirty (30) working days of the end of the first posting period.
- D. A position held by a certified and/or licensed teacher who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five (5) years.
- E. Nothing provided herein shall prevent the Board from eliminating a position due to lack of need.
- F. Upon recommendation of the Principal and approval by the classroom teacher, Superintendent, and Board, a classroom teacher assigned to the school may at any time during the school year be assigned to a new or existing classroom teacher position at the school during the school year without the position being posted. This provision shall not apply to vacancies that will occur in the ensuing year or other future years.

- G. Each year, provided there are no provisions of State law to the contrary, all employees subject to release as part of a reduction in force shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, and for which they are qualified. It will then be upon the recommendation of the Superintendent, that the Board shall appoint the successful applicant from among such employees before posting such vacancies for application by other persons. This provision shall not preclude a County Board from posting and filling vacancies that exist in the current school year nor shall it supersede or alter the operation of WV Code 18A-4-8 for WV Code 18A-4-81.

All positions shall identify under a separate heading "Minimum Qualifications" listing certification requirements and that may list other requirements for which it has been determined that a candidate hold to be deemed minimally qualified.

Professional employees who have been placed on the preferred recall list shall be notified annually of the job application procedures and any website used to advertise vacancies. The notice shall be sent by certified mail via U.S. Postal Service to their last known address of the employee, and it shall be the duty of each professional person to notify the Board of continued availability annually, of any change in address or in any change in certification and/or licensure. Any employee failing in duty shall be notified by via U.S. Postal Service certified mail to his/her last known address that they will be removed from the preferred recall list unless good cause is shown, within thirty (30) days, as to why they should not be removed from the preferred recall list. If good cause is not shown within the prescribed time, the Superintendent shall remove the employee from the recall list. If an employee accepts full-time employment with another County Board s/he shall be removed from the preferred recall list. Provided, however, the failure of an employee on the preferred recall list to make application for an available position shall not be grounds for removal from the preferred recall list.

Where the total number of classroom teaching positions in an elementary school does not increase from one (1) school year to the next, but there exists in that school a need to realign the number of teachers in one (1) or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted if the employee and the Board mutually agree to the reassignment.\*

**\*All language in this policy comes directly from the statutes listed below and is mandated by those statutory provisions.**

Revised 6/25/09

Revised 3/16/15

Revised 1/21/20

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WV Code 18A-4-7a

WV Code 18A-4-21

West Virginia State Board of Education policy 5000



